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# भारत का राजपत्र

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वर्ष चौहानी, शनिवार, जून 10, 1989/ज्येष्ठ 20, 1911  
NEW DELHI, SATURDAY, JUNE 10, 1989/JYAISTA 20, 1911

इस भाग में भिन्न पृष्ठ संख्या वाली है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as  
a separate compilation

भाग II—खण्ड 3—उप-खण्ड (II)  
PART II—Section 3—Sub-section (II)

(रक्षा मंत्रालय को छोड़ कर) भारत सरकार के मंत्रालयों द्वारा जारी किए गए सार्विक आदेश और अधिसूचनाएँ  
Statutory Orders and Notifications Issued by the Ministries of the Government of India (other than  
the Ministry of Defence)

रिवर्स मंत्रालय

(अध्य विभाग)

नई दिल्ली, 5 मई, 1989

का. आ. 1310.—भवित्व निधि अधिनियम, 1925 (1925 का 19)  
की धारा 8 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग  
करते हुए, फेन्ड्रीय सरकार एवं द्वारा निर्देश देती है कि उत्तर अधिनियम  
के उपबच्य (धारा 6को छोड़कर) राष्ट्रीय नगर कार्य संस्थान, नई दिल्ली  
के कर्मचारियों के लाभ के लिए मन्त्रालय भवित्व निधि पर लागू होंगे।

[का.म. 4(2)-मंस्या V-83(II)]

हुए, फेन्ड्रीय सरकार एवं द्वारा निर्मितिवित लोक मन्त्रालय को उक्त  
अधिनियम की अनुसूची में शामिल करती है:—

“राष्ट्रीय नगर का” संस्थान, नई दिल्ली ”

[का.म. 4(2)-मंस्या V-83(II)]  
अजली देवशर, उप सचिव

S.O. 1311.—In exercise of the powers conferred by sub-  
section (3) of section 8 of the Provident Funds Act, 1925  
(19 of 1925), the Central Government hereby adds to the  
Schedule to the said Act the name of the following public  
institution, namely :—

“The National Institute of Urban Affairs, New Delhi.”

[F. No. 4(2)EV/83 (II)]  
ANJALI DEVASHER, Dy. Secy.

(आधिक कार्य विभाग)

(श्रीकिंग प्रभाग)

नई दिल्ली, 24 मई, 1989

S.O. 1310.—In exercise of the powers conferred by sub-  
section (2) of section 8 of the Provident Funds Act, 1925  
(19 of 1925), the Central Government hereby directs that the  
provisions of the said Act (except section 6A) shall apply to  
the Provident Fund established for the benefit of the employees  
of the National Institute of Urban Affairs, New Delhi.

[F. No. 4(2)EV/83(II)]

का.आ. 1311.—भवित्व निधि अधिनियम, 1925 (1925 का 19) की  
धारा 8 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते

1377GI/89--1

(1649)

का.आ. 1312.—फेन्ड्रीय सरकार, औद्योगिक वित्त निगम अधिनियम, 1948 (1948 का 15) की धारा 21 की उपधारा (2) के  
प्रत्युत्तर में भारतीय औद्योगिक वित्त निगम के निदेशक बोर्ड की  
सिफारिश पर उक्त निगम द्वारा 30 मई, 1989 को जारी किए  
जाने वाले और 30 मई, 2009 को प्रतिष्ठित होने वाले बोर्ड पर

देव ब्याज की दर एवं द्वारा 11.5 प्रतिशत (साले भाग्य ग्रन्ति) अधिक तिदर्रित करती है।

[फा. सं. 2/20/आई एफ -1/89]  
वी. पी. भारद्वाज, अव. सचिव

(Department of Economic Affairs)  
(Banking Division)

New Delhi, the 24th May, 1989

S.O. 1312.—In pursuance of sub-section 2 of Section 21 of the Industrial Finance Corporation Act, 1948 (15 of 1948), the Central Government, on the recommendation of the Board of Directors of the Industrial Finance Corporation of India, hereby fixes 11.5 per cent (Eleven & half percent) per annum as the rate of interest payable on the bonds to be issued by the said Corporation on 30th May, 1989 and maturing on 30th May, 2009.

[F. No. 2(20)/IF-1/89]  
V. P. BHARDWAJ, Under Secy.

### उद्योग संत्रासय

(अद्योगिक विकास विभाग)

नई दिल्ली, 26 मई, 1989

का.आ. 1313 :— आपार और पर्य बम्बु चिन्ह नियम, 1959 का और संशोधन करने के लिए कतिपय नियमों का निम्नलिखित प्राप्त, जिसे फेद्रीय सरकार, आपार और पर्य बम्बु चिन्ह अधिनियम, 1958 (1958 का 43) की धारा 133 द्वारा प्रदत्त विविधों का प्रयोग करने हुए, बनाना चाहती है। उक्त धारा की उपधारा (1) की प्रवेशानुसार ऐसे सभी व्यक्तियों की जानकारी के लिए प्रकाशित किया जाता है, जिनके प्रसाकृत होने की संभावना है और इसके द्वारा यह गूचना दी जाती है कि उक्त प्राप्त नियमों पर उस तारीख से जिसको गजपत्र में यथा प्रकाशित है इस अधिसूचना की प्रतियो उपलब्ध कर ही जाती है, वो मार्य होते पर या उसके पश्चात विकार किया जाएगा।

किन्तु ऐसे आर्थिकों या सूक्ष्मादों पर, जो उपर्युक्त अधिकार की समाप्ति के पूर्व उक्त प्राप्त की आवश्यकता किसी व्यक्ति से प्राप्त होते, फेद्रीय सरकार विकार करेगी।

### प्राप्त अंशोधन

1. इन नियमों का संक्षिप्त नाम आपार और पर्य बम्बु चिन्ह (गंणोधन) नियम, 1959 है।

2. आपार और पर्य बम्बु चिन्ह नियम, 1959 में—

(1) नियम 24 में, उनियम (2) के पश्चात निम्नलिखित उनियम जोड़ा जाएगा, अर्थात् :—

"(3) कोई वी व्यक्ति नवाणी करने के लिए और प्रतिविधिकार अधिनियम, 1957 की धारा 45 की उपधारा (1) के अधीन इस आपार का प्रमाणात्मक जारी करने के लिए रजिस्ट्रार को प्राप्त दी.एम.-60 में अनुरोध कर सकता है ऐसा किसी कलात्मक हृति को जिसका प्रतिविधिकार अधिनियम के अधीन प्रतिविधिकार के रूप में रजिस्ट्रीकरण चाहे। यदि इदरूप या इनकी समरूप है कि थोड़ा ही जाप आवेदन से मिल किसी व्यक्ति के नाम से आपार और पर्य बम्बु चिन्ह अधिनियम, 1958 (1958 का 43) के अधीन एक आपार चिन्ह के रूप में रजिस्ट्रीकरण किया गया है या यह कि उसके द्वारा ऐसे रजिस्ट्रीकरण के लिए उम अधिनियम के अधीन कोई आवेदन नहीं किया गया है।"

(2) पहली अनुमूली गं प्रविट भ. 66 के पश्चात निम्नलिखित प्रविट जोड़ा जाएगी अर्थात्—  
"67 नियम 24(3) के अधीन नवाणी करने और प्रमाणात्मक जारी करने के लिए 700.00 रुपए दी एम-60"

(3) दूसरी अनुमूली में—

(i) "दी एम-59" प्रविट के पश्चात निम्नलिखित प्रविट अनुस्थापित की जाएगी अर्थात्—  
"दी एम-60 नियम 24(3) के अधीन नवाणी करने और प्रमाणात्मक जारी करने के लिए अनुरोध 67"

(ii) प्रत्येक दी एम-59 के पश्चात निम्नलिखित प्रत्येक अनुस्थापित किया जाएगा, अर्थात्—  
"दी एम-60  
कोम: 700 रुपए

आपार और पर्य बम्बु चिन्ह अधिनियम, 1958

नियम 24(3) के अधीन नवाणी करने और प्रमाणात्मक जारी करने के लिए अनुरोध

रजिस्ट्रार को, नियम 24(3) के अधीन यह प्रभिन्निष्ठत यहों के लिए कि क्या कोई ऐसा व्यापार चिन्ह अधिनियम पर है जो इसके माध्यमें भी गई व्यापार चिन्ह के अधीन आपार चिन्ह अधिनियम 13 इंच×8 इंच या 33 मीट्रीमीटर×20 मीट्रीमीटर के मध्यवृत्त कागज पर चिपकाई गई हो। यह समरूप है, नवाणी के बारे में प्रतिविधिकार अधिनियम, 1957 की धारा 45 के अधीन उपर्युक्त लिए प्रमाणात्मक जारी करने के बारे में अनुरोध किया जाता है।

आर्थिक	19
	1.
	2.

### में

रजिस्ट्रार आपार चिन्ह  
आपार चिन्ह रजिस्ट्री कार्यालय  
सुचई

1. रजिस्ट्रार
2. भारत में गो"

[फाइल म. 14/1/88-री.पी.एंड री.]  
जयश्री बानल, उप सचिव

मूल अधिसूचना का.आ. 2603 तारीख 25-11-59 द्वारा प्रकाशित की गई थी जहांप्रवान उपकार का.आ. तारीख द्वारा संगोधन किया गया।

1. का.आ.सं. 534 दिनांक 25-2-1963
2. का.आ.सं. 397 दिनांक 23-1-1969
3. का.आ.सं. 5789 दिनांक 9-11-1971
4. का.आ.सं. 171-ई दिनांक 1-3-1985

MINISTRY OF INDUSTRY  
(Department of Industrial Development)

New Delhi, the 26th May, 1989

S.O. 1313.—The following draft of certain further amendments to the Trade and Merchandise Marks Rules, 1959 which the Central Government proposes to make in exercise of the powers conferred by Section 133 of the Trade and Merchandise Marks Act, 1958 (43 of 1958), is hereby published as required by Sub-section (1) of the said section for the information of all persons likely to be affected thereby and notice is hereby given that the draft will be taken into

consideration on or after two months from the date on which copies of this notification as published in the Official Gazette are made available.

Any objections or suggestions which may be received from any person in respect of the said draft before the expiry of the aforesaid period, will be considered by the Central Government.

#### DRAFT AMENDMENTS

1. These rules may be called the Trade and Merchandise Marks (Amendment) Rules, 1989.

2. In the Trade & Merchandise Marks Rules, 1959—

(i) in rule 24, after sub-rule (2) the following sub-rule shall be added, namely :—

"(3) Any person may request the Registrar, on form TM-60 to cause a search to be made and for issue of certificate under sub-section (i) of Section 45 of Copyright Act, 1957 to the effect that no trade mark identical with or deceptively similar to such artistic work, as sought to be registered as copyright under the Copyright Act, has been registered as a trade mark under the Trade and Merchandise Marks Act, 1958 (43 of 1958) in the name of, or that no application has been made under that Act for such registration by any person other than the applicant."

(2) in the First Schedule after entry No. 66 the following entry shall be added, namely :—

"67 For a search & issue of certificate under Rule 24(3) Rs. 700.00 TM-60".

(3) in the second Schedule (i) after entry "TM '9", the following entry shall be inserted, namely :

"TM-60 rule 24 (3) Request for search & 67" issue of certificate under Rule 24(3).

(ii) after the form TM 59 the following form shall be inserted, namely :—

TM-60

Fee : Rs. 700.

#### TRADE AND MERCHANDISE MARKS ACT, 1958 Request for search and issue of certificate under Rule 24(3).

The Registrar is hereby requested under Rule 24(3) to search to ascertain whether any trade marks are on record which resemble the artistic work sent herewith in triplicate (each artistic work being mounted in a sheet of strong paper approximately 13 inches by 8 inches or 33 centimeters by 20 centimeters) in size and issue a certificate for use under Section 45 of the Copyright Act, 1957.

Dated this ..... day of ..... 19

1. ....  
2. ....

To

The Registrar of Trade Marks,

The Office of the Trade Marks Registry at Bombay.

1. Signature

2. Address in India.'

[F. No. 14/1/88-PP&C]

JAYASHREE WATAL, Dy. Secy.

Principal notification was published vide S.O. 2603 dt. 25-11-59 and amended subsequently by S.O. on

1. S.O. No. 534 dt. 25-12-1963

2. S.O. No. 397 dt. 23-1-1969.

3. S. O. No. 5789 dt. 9-11-1971.

4. S.O. No. 171.E dt. 1-3-1985

#### कल्याण मंत्रालय

नई दिल्ली, 19 मई, 1989

का.प्रा. 1314.—ऐन्डोवर दरबार, दरगाह खावा साहब अधिनियम, 1955 (1955 का 36) की वारा 9 की उम्मदा (1) दरगाह प्रदत्त शक्तियों का प्रयोग करते हुए दरगाह समिति अमरेश के पारम्पर्य से लैंकिनेट करने मुहम्मद उस्मान, (सेवानिवृत्त) को 2 फरवरी, 1989 से ही एक वर्ष की प्रबंधि के लिए दरगाह खावा साहब का नाजिम नियुक्त करती है।

[सं. 11(6)/83-वक्फ]

पा.जी. लेल, समृद्धि राजिका

#### MINISTRY OF WELFARE

New Delhi, the 19th May, 1989

S.O. 1314.—In exercise of the powers conferred by sub-section (1) of Section 9 of the Durgah Khawaja Sahab Act, 1955 (36 of 1955), the Central Government, in consultation with the Durgah Committee, Ajmer, hereby appoints Lt. Col. Mohd. Usman (Retd.) as Nazim of the Durgah Khawaja Soheb, Ajmer for a period of one year on and from the 2nd February, 1989.

[No. 11(6)/83-Wakf]

P. G. LELE, Jt. Secy.

#### अम संशोधन

नई दिल्ली, 15 मई, 1989

का.प्रा. 1315.—श्रीदामोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रत्युत्तर से, केन्द्रीय सरकार भिलाई रस्तील खाट, पा.बो. भिलाई, जिला बुंदे (म.प्र.) ले प्रबंधतव से सम्बद्ध नियोजकों और उनके कामकाजों के बीच, अनुबंध में निर्दिष्ट अंतर्गत विवाद में केन्द्रीय सरकार श्रीदामोगिक प्राविकरण, जबलपुर खाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-5-89 को प्राप्त हुआ, था।

#### MINISTRY OF LABOUR

New Delhi, the 15th May, 1989

S.O. 1315.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bhilai Steel Plant, P.O. Bhilai, Distt. Durg (M.P.) and their workmen, which was received by the Central Government on the 8-5-89.

#### ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(64)/1985

#### PARTIES :

Employers in relation to the management of Bhilai Steel Plant, P.O. Bhilai, Distt. Durg (M.P.), and their workmen Shri B. M. Pandey, Time Keeper Grade I through the President, Metal Mines Workers Union (INTUC), P.O. Dallirajhara, Distt. Durg (M.P.).

#### APPEARANCES :

For Workman—Shri P. D. Padhak, Advocate.

For Management—Shri D. C. Henri, Asstt. Chief Law Officer.

INDUSTRY : Steel.

DISTRICT : Durg (M.P.)

AWARD

Dated 25th April, 1989

The Central Government in the Ministry of Labour vide Notification No. L-26012/27/85-D.III.B, dated the 31st July, 1985 referred the following dispute for adjudication to this Tribunal under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947:—

SCHEDULE

"Whether the action of the management of Bhilai Steel Plant in removing Shri B. M. Pandey, Time Keeper Grade I, Rajhara, Mines from service with effect from 14-2-1984 is justified? If not, to what relief is the employee entitled?"

2. On receipt of the reference order parties filed their respective pleadings and documentary evidence. Thereafter the following issues were framed:—

ISSUES

1. Whether the domestic enquiry is proper and legal?
2. If not, whether the workman misconducted himself as alleged in the charge-sheet?
3. Whether the punishment awarded is justified?

3. From the pleadings of the parties it appears that Shri B. M. Pandey, Time-keeper Grade I, Rajhara Mines of Bhilai Steel Plant was charge-sheeted on certain allegations and after domestic enquiry he was removed from service. Workman challenged the domestic enquiry therefore I heard the parties on Issue No. 1 and decided vide order dt. 27-1-1986 in favour of workman. Aggrieved by this order the Management moved to the High Court of Madhya Pradesh, Jabalpur and the Hon'ble High Court stayed the proceedings vide order dated 26-6-1986 in M.P. No. 1240/86. By another order dated 21-4-1988 the Hon'ble High Court permitted the Tribunal to proceed with the case but passing of the final order was stayed.

4. Therefore the case was fixed for evidence of parties. But in the meanwhile good sense prevailed in parties and they have negotiated and mutually settled the matter and filed a compromise petition, duly signed by them. The terms of settlement are as under:—

TERMS OF SETTLEMENT

- (i) That Shri Pandey shall be re-appointed on the post which he held on the date of removal of service i.e. Time Keeper Grade-I, with effect from 27-1-1986 (this is the date on which the enquiry was vitiated by Central Industrial Tribunal).
- (ii) That on his re-appointment he would be allowed to draw the pay which he would have drawn had his services, not been terminated.
- (iii) That for the period from 27-1-86, till he joins duty as a fresh entrant, he would be paid 25 per cent of the wages.
- (iv) That the past services shall not be considered for any purpose whatsoever. Consequently, the amount of CPF and Gratuity for the past period shall be released to him and final payment shall also be made to him as per rules.
- (v) That he shall pay the normal rent for the quarter in his possession from the date of removal of service till his fresh appointment and he shall be allowed to retain that quarter on usual terms and conditions.

5. I have perused the terms of settlement and in my opinion they are just, fair reasonable and in the interest of workmen concerned as well as the Union who raised the industrial dispute. I, therefore, give my award in terms of the above settlement.

There shall be no order as to costs.

V. S. YADAV, Presiding Officer

[No. L-26012/27/84-D.III(B)]

नई दिल्ली, 16 मई, 1989

का.आ. 1316.—ओर्डरिंग क्षिति अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुचरण में, केन्द्रीय सरकार नेशनल मिनरल एंड लैभरेट कारपोरेशन लि. के प्रबन्धता से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओर्डरिंग क्षिति में केन्द्रीय सरकार ओर्डरिंग अधिनियम, जबलपुर के पर्सट को प्रकाशित करता है, जो केन्द्रीय सरकार का 8-5-89 को प्रस्तुत हुआ था।

New Delhi, the 16th May, 1989

S.O. 1316.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of National Mineral Development Corporation Ltd., and their workmen, when was received by the Central Government on the 8-5-89.

ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(55)/1985

PARTIES :

Employers in relation to the management of National Mineral Development Corporation Ltd., Somajigao, Hyderabad (A.P.) and their workman Shri M. K. Basu through the General Secretary, Samyukt Khadan Mazdoor Sangh (AITUC), LIG-9, Vaishali Nagar, Bhilai, Distt. Durg (M.P.).

APPEARANCES :

For Workman—Shri C. R. Bakshi.

For Management—Shri P. S. Nair, Advocate.

INDUSTRY : Iron Ore. DISTRICT : Durg (M.P.).

AWARD

Dated, the 25th April, 1989

The Central Government vide Notification No. L-26012/4/83-D. III-B, dated the 19th June, 1985 referred the following dispute for adjudication to this Tribunal under Section 10(1)-(d) read with sub-section (2A):—

SCHEDULE

1. Whether the action of the management of National Mineral Development Corporation Ltd., in not allowing the leave benefits to Shri N. K. Basu, Store Keeper under N.M.D.C. Service Regulations was justified? If not, to what relief is the concerned workman entitled?"

2. Parties contested the dispute by filing their pleadings and documents etc. When the case was at the stage of filing written arguments and the Union filed the written arguments, the workman concerned Shri M. K. Basu filed an application stating that since he has been promoted to the post of Junior Officer (Materials) i.e. Supervisory cadre, he is not interested in the decision of the case. Therefore, he withdraws the present case.

From the above it appears that the workman concerned is not interested in prosecuting the case. I, therefore, record no dispute award in the present reference.

No order as to costs.

V. S. YADAV, Presiding Officer.

[No. L-26012/4/83-D.III(B)]

नई दिल्ली, 18 मई, 1989

का.शा. 1317.—ओर्डोरिंग विवाद अधिनियम, 1947 (1947 का 14) के बारे 17 के अनुमति में, केंद्रीय सरकार ने भारत पेट्रोलियम कार्पोरेशन लि., बंगलौर के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट ओर्डोरिंग विवाद में केंद्रीय सरकार ओर्डोरिंग अधिकार के प्रवपट को प्रकाशित करती है, जो ऐंट्रीय सरकार को 12-5-89 को प्राप्त हुआ था।

New Delhi, the 18th May, 1989

S.O. 1317.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employees in relation to the management of M/s. Bharat Petroleum Corporation Ltd., Bangalore and their workmen, which was received by the Central Government on the 12-5-1989.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT BANGALORE

Dated, the 27th Day of April, 1989

Central Reference No. 68/88

#### I PARTY :

Shri Satyaprakash Major, No. 37, 11th Main Read,  
Vasanthanagar Bangalore-560052.

Vs.

#### II PARTY :

The Manager, M/s. Bharat Petroleum Corporation Limited Banasavadi Road Maruthi Sevanagar, Bangalore-23.

#### APPEARANCES :

For the I party Shri N. G. Phadke, Advocate.  
For the II party Shri T. G. Achary, Advocate.

#### AWARD

By excising its powers under Section 10(1)(d) of the I. D. Act, the Government of India, Ministry of Labour made the present reference on the following point of dispute by its Order No. L-30012/39/88-D.III (B) dated 19-12-1988.

#### POINT OF REFERENCE

"Whether the action of the management of M/s. Bharat Petroleum Corporation Ltd., Bangalore in terminating the services of Shri Satyaprakash, ex-employee w.e.f. 28-2-1983 is justified? If not, what relief is the said workman entitled to?"

2. The I party workman has filed his claim statement and his contentions, in brief, are as follows.

He has worked as a Peon in the II party management from 1-9-1981 to 28-2-1983. He was drawing a salary of Rs. 702 per month. His services were terminated illegally on 28-2-1983. With an intention to get rid of the I party as he a deaf person and to confirm the services of one Shri Napoleon Sunanda Kumar, the management started making false accusations against him. Two interested employees joined hands with the management and the II party thought of creating certain records against him. A chargesheet was issued against him, making false allegations. A show of an enquiry was held. By deceitful means documents were prepared to make, belief that they were helping him. Then he was dismissed, by a letter dated 28-2-1983 which was posted on 14-3-1983. He wrote a letter dated 28-3-1983 not to harass and to withdraw the the order of termination, since he is a physically handicapped person and since he had committed no fault, but no reply was sent. He approached the Conciliation Officer of the Government of Karnataka by a return dated 17-5-83. The management took an adamant attitude and hence a reference was made by the Government of Karnataka to the Additional Labour Court, Bangalore by

on order dated 20-9-1984. The Hon'ble High Court of Karnataka quashed the said order in W.P. No. 6122/1985, filed by the II party, on the ground that the appropriate Government is the Central Government. He then approached the Central Government. The Government did not make the reference. He filed W.P. No. 5756/1987. It was allowed on 23-9-1988. The present reference was made on 19-12-1988. The action of the management is illegal on the following grounds :

- (1) It is in violation of principles of natural justice,
- (2) He was dismissed from service, because the II party had taken interest in confirming Shri Napoleon Sunanda Kumar,
- (3) Their action is unreasonable and malafide,
- (4) Their action is not in good faith,
- (5) It is in colourable exercise of powers of the II party,
- (6) Fair and proper enquiry was not held,
- (7) The order of dismissal is not passed by a competent person,
- (8) It is not in accordance with the Standing Orders.
- (9) The Enquiry Officer was supporting to the Presenting Officer. He has not recorded any evidence. He has not given copies of the proceedings to him. The findings of the Enquiry Officer were not given to him, and
- (10) The punishment imposed on him is disproportionate. An award may be passed, holding that the order of dismissal is illegal and for reinstatement and consequential benefits.

3. The II party has filed its counter statement and inter alia, it is contended as follows :

He was appointed as a Peon on probation for 12 months by a letter dated 1-9-1981. He reported to the Installation Manager at Bangalore on 1-9-1981. During his probationary period, it was reported on 31-8-1982 that he used abusive language, threatened and assaulted a co-worker by name Shri A. Ganesan. A memo dated 1-9-1982 was issued to him to show cause as to why disciplinary action should not be taken. He was informed that on account of seriousness of the acts alleged against him, he was suspended from work. When the said show-cause notice was attempted to be served on him on 1-9-82, he refused to accept the same. The letter was read out to him in the presence of Shri V. J. Thiruvenkintam, Deputy Installation Manager, Shri G. Swaminathan, Operations Officer, B. Krishnamoorthy, Clerk-cum-typist and Shri M. Ananda, Gauger. The accusation was explained to him in Kannada. Since he refused to accept the same was sent to him by Registered post to his residential address. A copy was affixed on the notice board with another memo. He replied by a letter dated 4-9-1982. It was not satisfactory. A chargesheet dated 14-9-1982 was issued to him and it was shown that he had committed acts of misconduct punishable under clauses 29.1.5, 29.1.6 and 29.1.7 of the Standing Orders. He was informed that an enquiry would be held on 24-9-1982 in the installation office. He was further informed that he may bring a co-worker to assist him in the enquiry. Sri K. Neelakantan, the Deputy Divisional Manager, Bangalore in the presence of workman held the enquiry on 24-9-82 and continued it on 14-10-1982. He did not avail of the service of any co-worker to defend him. He also stated that he had no witness on his side. He stated that he did not want to cross-examine the witnesses. He was given all the opportunities. He filed certain statements and they were marked. The Enquiry Officer held him guilty. The Director (Marketing) under whom the Installation Branch is placed, went through the entire record and found him guilty. Considering the nature of the charges, that were proved against him and his past record, he was dismissed from service by proceedings dated 14-2-1983. Following the same an order was issued on 28-2-83. Apart from the same, his past service during the probationary period was highly unsatisfactory. The enquiry held against him is proper and valid. The allegations made by him are incorrect. There was no intention on the part of the II party to get rid of him on the ground that he is a deaf person. At the time of his appointment itself it was known that he was deaf. The medical examination re-

port dated 27-8-1981 itself shows against the column of "Hearing"—"Poor". There was no need to terminate his services for confirming Napolean Sunanda Kumar. No false accusation was made against him. Various statement made by him are after thoughts. Many letters of warning and caution were issued to him in 3-12-81, 3-2-82, 22-4-82 and 29-8-82. His probationary period had ended on 31-8-1982. The II party would have been well within its right to terminate his service on the ground that his service was not satisfactory by the end of 31-8-1982. However, the procedure was adopted to give him full opportunity. The allegations against him were found to be true on due enquiry. It is true that he had written a letter dated 22-3-1983. Since there was nothing new, there was no necessity to send any reply. There is no need to state anything regarding the conciliation and subsequent matters. The grounds put forth by him in para 4 do not have any merit. No principle of natural justice has been violated. There is no connection between the dismissal is no colourable exercise of power. The Personnel Manager Sunanda Kumar. There is no want of good faith. There is no colourable exercise of power. The Personnel Manager is competent to issue the order of dismissal. The decision to dismiss him has been taken by the Director (Marketing), who is fully competent. The Enquiry Officer was not subordinate to the Presenting Officer. The Enquiry Officer was the Deputy Divisional Manager on the sales side in the Divisional Office, Bangalore. The Presenting Officer, at that time was the Deputy Installation Manager in the Installation side at Bangalore. They are separate units. The punishment ordered against him is commensurate with the misconduct. He is not entitled to any relief. The reference may be rejected.

4. In view of the said pleadings, a preliminary issue was raised as shown below.

"Whether the second party proves that it has held the domestic enquiry in accordance with law?"

5. On the said issue, the management examined MW-1 the Enquiry Officer and got marked Exs. M-1 to M-6.

6. No evidence was adduced for the workman.

7. The parties were heard. By a considered order dated 6-3-89, it was held that the domestic enquiry held by the management is in accordance with the law.

8. Thereafter, the parties were called upon to adduce evidence on the rest of the points and argue.

9. The management has examined MW-2. Then the workman got himself examined and got marked Exs. W-1 to W-3.

10. The parties have been heard.

11. My findings on the point of reference is as follows.

The management of M/s. Bharat Petroleum Corporation Ltd., Bangalore was justified in terminating the services of Shri Satyaprakash, ex-employee with effect from 28-2-1983 and he is not entitled to any relief.

#### REASONS

12. In the grounds put forth by the I party workman, it has been stated that no fair and proper enquiry was held against him. In that connection, a considered order dated 6-3-89 has been passed that it is in accordance with the law.

13. The other contentions raised by the I party workman are that the II party was interested in one Napolean Sunanda Kumar and in order to confirm him a partisan view has been taken against the I party. The II party has denied the said allegation. It is their contention that there was no nexus between the confirmation of Napolean Sunanda Kumar and the disciplinary action taken against the I party workman. In para 33 of his evidence WW-1 Satyaprakash has stated that he was removed from service by the II party, in order that they intended to take their man. In para 36 a specific question has been put to him that he had alleged that the management intended to take their own man and therefore he was removed and whether he can name that person. In reply, he has stated that person is Napolean Sunanda Kumar. In para 37 he however, concedes that Napolean Sunanda

Kumar was working with the II party when he was also working. It is not explained as to how the management was interested in removing the II party from service, if it is an admitted fact that Napolean Sunanda Kumar was already working and was very much in the II party when the I party Satyaprakash was also working. No case has been put forth either in the claim statement and there is no piece or evidence, nor is there any suggestion either to MW-1 or to MW-2 that there was any necessity to remove the I party from service in order to confirm Napolean Sunanda Kumar. No motive has been suggested to the management in the claim statement and no suggestion has been made to any management witness that they had any reason to take sides with Napolean Sunanda Kumar.

14. The sequence of events would themselves show that there is hardly any truth in the allegation that the management was taking sides with Napolean Sunanda Kumar. Ex. M-7 dated 1-9-1982 is the letter which was sent to the I party by registered post. Ex. M-8 is the postal acknowledgement due to show that it has been served on the I party forthwith. Ex. M-7 reads that original letter dated 1-9-1982 which the I party had refused to accept had been enclosed to the said letter and since he had refused to receive the same, it was read out to him in Kannada in the presence of several officials as named therein and the same has been sent to him by Registered Post Ack. Due Ex. M-6 is the letter dated 1-9-82 and the management contends that it had been tendered to the I party, but he had refused to receive the same. Ex. M-6 reads that at about 2.30 p.m. on 31-8-82, the I party had used abusive language, threatened and assaulted A. Gansan a co-worker in the kitchen block in the presence of Napolean Sunanda Kumar and that he had been called upon to show cause as to why disciplinary action should not be taken against him. Ex. M-9 is the reply sent by the workman to Ex. M-7 and Ex. M-6. In Ex. M-9, he states that he is not guilty, that he did not assault Ganesan on 31-8-82, but that on that day Ganesan and Napolean had entered into the kitchen and started eating biscuits and at that time he was washing the plate. He further alleges in Ex. M-9 that he asked him not to eat the biscuits but he did not listen. He adds that he asked them to quit the kitchen or else he would report the matter to the superior officers. But they got angry and assaulted him, threatened that they would kill him and pointed a knife. He then alleges that Ganesan is always in the habit of picking quarrels with him and Napolean always took sides with Ganesan and helps him to harm him (Satyaprakash). He then alleges that Ganesan always abuses him in the vulgar language and tells him to go away, since he is handicapped. He further states that he should not be punished for offences which he has not committed. After the said explanation was sent to the management, the counter statement shows that he management had issued the chargesheet Ex. M-1 dated 14-9-81, being not satisfied with his explanation. Ex. M-3 dated 24-9-83 is the reply given by the workman to the same. In Ex. M-3, he had complained that he felt sorry, because the management did not consider his explanation dated 4-9-82. He has reiterated his allegations made against Ganesan and Napolean in Ex. M-3. He further alleges that though he had politely told them not to eat the biscuits, since he would be held responsible, they used vulgar language and that Ganesan spat on his face and threatened to take revenge. In para 3 of Ex. M-3 he alleges that both of them shouted at him in a loud voice and addressed as "you bloody deaf boy count your days in this organisation. If you want to be safe, you better resign from the job and quit or otherwise we will see that you will be sacked from the job. we waited for a long time the opportunity came to us, we utilise this to the best possible level to sack you and so on". In para 10 of Ex. M-3, he further alleges that those two persons had threatened him and many times they had forced him to resign from the job, for the reason that the job was reserved for someone else. There is no allegation as such against the management or that the management had been taking sides against the workman and it was in favour of the said Ganesan or Napolean. Thus neither in Ex. M-9 nor in Ex. M-3 there is any case suggesting that the management had any cause to take sides with Napolean. The learned counsel referred to Ex. M-15 and pointed out that though it is dated 29-8-82, it has been signed on 3-9-82 and because in the meanwhile the letter Ex. M-6 dated 1-9-82 had been issued, it is obvious that the management has manipulated the things and that an inference arises that they were contemplating to terminate his services even before Ex. M-6 was issued. Ex. M-15 is dated 29-8-82, and it deals with an incident dated 9-8-82 of 7.30 a.m. Ex.

M-15 reads that on an earlier occasion, by a letter dated 22-4-82, he had been cautioned to correct his behaviour and should not indulge in the repetition of such acts, but it was reported that on 9-8-82 he was making allegations against Ganesan at the Tellyman's Office, that he had used abusive language and threatened him, that he would be assaulted outside the premises. Merely because the Installation Manager had signed the letter Ex. M-7 dated 1-9-82 and another letter Ex. M-6 on the same day, it cannot be said that there was manipulation of the letter Ex. M-15 dated 29-8-82, since it bears his signature dated 3-9-82. The learned counsel further contended that the letter Ex. M-15 signed on 3-9-82 indicates that there was no incident on 30-8-82. As observed earlier, the typed date in Ex. M-15 is 29-8-82. The incident which made the management to issue Ex. M-6 was of 31-8-82 of 2.30 p.m. It is obvious from Exs. M-6 and M-7 that because the incident dated 31-8-82 of 2.30 p.m. was of grave nature, the management had taken immediate steps to issue Ex. M-6 but since the workman refused to receive the same, the management had to resort to read it out in the presence of as many as four witnesses and had then sent the same by Registered post and Ex. M-8 establishes the fact that Ex. M-6 and Ex. M-7 had been served on him. The letter Ex. M-15 related to the incident of 9-8-82 and from the very nature of the contents of Ex. M-15, it can be made out that the officer had signed it in routine course along with other papers on 3-9-82 and thereafter it had been sent by registered post. The postal acknowledgement at Ex. M-16 further proves the fact that Ex. M-15 was served on him by Registered post. The allegations made by the I party workman in para 2 or in para 4 of the claim statement that the II party had taken sides of Napolean is found to be far from truth, in the context of the evidence analysed above.

15. The I party workman has alleged in the claim statement that the action of the II party is not in good faith and that it is against all the canons of justice. The II party on the other hand, has contended that though it was permissible to merely pass an order stating that his probationary was not satisfactory and discontinue him, in order to give him, in order to give him a fair opportunity, it has issued the charge sheet and has held the enquiry and on due satisfaction that he was guilty his service has been discontinued. The evidence of MW-2 the Senior Manager shows that since there was a vacancy, they wrote to the Employment Exchange to send a panel of candidates and also addressed to the Zilla Syunik board for considering the case of Ex-servicemen. It appears in para 4 of his evidence that as per the Government guidelines, they were required to recruit physically handicapped persons also and since the I party workman was sponsored by the Employment Exchange, he was appointed as a peon in the category reserved for physically handicapped. It is not the case of the I party workman that Napolean was also appointed in the category of physically handicapped, being sponsored by the Employment Exchange. Not even a suggestion is made either to MW-1 or MW-2 that the said Napolean was a rival to the I party in any manner, either in the matter of recruitment or in the matter of confirmation or seniority or promotion. In order to refute the contention that the management is interested in somebody else and therefore the service of WW-1 Satyaprakash has been terminated, the management had produced MW-2 and his evidence shows that after the service of WW-1 was terminated on 28-2-83, the said post has been filled up through the Employment Exchange and a Scheduled Caste physically handicapped candidate sponsored by the Employment Exchange by name C. Bilvamani has been appointed with effect from 28-8-83 and that the said person is not known to anybody in the management. The evidence of MW-2 in para 12 discloses that there are about 10,000 employees in the II party. In the absence of specific allegations in the claim statement and concrete evidence produced by the workman, it cannot be accepted that the management was interested in somebody else or in Bilvamani or in Napolean and therefore his service has been terminated. The management has proved that it has acted in good faith, whereas it has not been proved by the workman that it lacks good faith.

16. It has been alleged in the claim statement that the action of the management is in colourable exercise of its powers. The enquiry proceeding discloses that the management and the Enquiry Officer had given him all the opportunities to defend himself but it was the workman himself who did not care to avail the same. There is no evidence on record to show that the management acted in colourable exercise of its powers.

17. It is alleged in the claim statement that the I party presumed that the Enquiry Officer had given perverse findings. It requires to be examined whether the findings of the Enquiry Officer are perverse. The perversity has two tests. The first test is whether the finding is not supported by any legal evidence. The second test is whether on the basis of the material produced before the enquiry officer any reasonable person would have arrived at the findings complained of. Before the Enquiry Officer the evidence was that of the witness examined for the management the complainant A. Ganesan, his complaint and the written statements filed by the workman himself. It has not been pointed out which part of the aforesaid evidence was not legal evidence and as to in what manner the Enquiry Officer has taken into account inadmissible evidence. In my view, the oral evidence of Ganesan that of the workman, the complaint, and the written statements of the workman such as Ex. E-1, F-2, H-3 and E-4 marked by the Enquiry Officer have been admitted in evidence in accordance with law. It is, therefore, not a case wherein the findings of the Enquiry Officer are based on inadmissible evidence.

18. The proceedings of the Enquiry Officer are at Ex. M-2. From pages 1 to 5 of Ex. M-2 there are the proceedings dated 24-9-1982. The said proceedings show that in the first instance he was asked whether he has understood the charges and when he confirmed he was asked whether he intended to plead guilty or not guilty. He has pleaded not guilty. When he was questioned whether he wanted any assistance, he did not answer directly but he stated that whatever he wanted to say has been mentioned in his letter dated 24-9-82, Ex. E-1 and he has nothing more to add. He has further stated that he was not prepared to sign in the proceedings. He has further stated that he would like to have a Kannada translation and then he would show it to his brother and then only he will sign. Though an interpreter was designated, the workman has refused to accept him. Thereafter, the Presenting Officer has explained the case of the management and has produced the complaint given by Ganesan. Then Napolean has been examined for the management. The I party workman was asked whether he intended to cross-examine Napolean with reference to his evidence and written statement Ex. W-3. The workman has still then stated that he does not want to cross-examine Napolean and that whatever he wanted to say has been stated in Ex. E-1. Thereafter the Enquiry Officer had asked the I party Satyaprakash whether he intended to make any statement. The workman has reiterated that whatever he had to state has been stated in Ex. E-1. The proceedings further disclose on page 5 that the workman refused to sign in the proceedings and stated that he may be allowed to take the proceedings and show the same to his brother, before putting his signature. Ex. M-2 then shows that the enquiry was adjourned and it was resumed on 14-10-82. On that day at the commencement of the enquiry, the Enquiry Officer has explained to the workman that he was free to make any statement or to examine any witness and in order to assist him Mr. Satis Chandra had been appointed as the interpreter. The workman has then stated that he had given his written statement dated 24-9-82 and he was further giving another statement of even date and he did not want to add anything. He has been again asked whether he had any witness. The workman has stated that he had told the truth and he did not want to produce any witness. Thereafter, the Presenting Officer has requested the Enquiry Officer that because the workman had filed a subsequent statement, he would like to ask him some questions. The questions asked by the Presenting Officer, on close examination would disclose that these were with reference to his second written statement. After getting the clarifications with reference to his written statements the Presenting Officer, has examined Shri A. Ganesan. The Enquiry Officer has given opportunity to the workman to cross-examine the said witness Ganesan. These matters have been already examined and discussed while dealing with the preliminary issue. The evidence of Napolean and Ganesan and the documents marked by the Enquiry Officer as E-1 to E-4 have been taken into account for recording the findings. In para 13 of the report, Ex. M-5, the Enquiry Officer has discussed about the said evidence. The evidence of the two witnesses is mutually corroborative and has been substantiated by the documents. On going through the same, I find that any reasonable person could have arrived at the same conclusion as recorded by the Enquiry Officer.

18. The procedure of termination of service for misconduct has been shown in Clause 28 of the standing orders. The procedure followed by the Enquiry Officer is in accordance with the said provision. There is no force in the contention of the I party that the management has not followed the provisions of the Standing Orders.

19. The learned counsel for the I party contended that on receipt of the letter dated 1-9-1982, Ex. M-6 along with the memo Ex. M-7, the workman had given his explanation as per Ex. M-9 dated 4-9-82 and it was incumbent on the part of the management on receipt of the same to have enquired into the matter and called for the explanation of Napolean and Ganesan, since the I party workman had levelled allegations against them. But, in not doing so, the management had acted in a partisan manner. The very purpose of holding a domestic enquiry is to find out the truth in the allegations made against a workman. It was for the workman to avail of the opportunity provided to him and to show that he was the victim and the management witnesses were the aggressors. The management cannot be simply blamed if the workman does not avail of the opportunity provided to him. I do not find that because the workman had levelled certain allegations against Ganesan and Napolean, the management should have issued charge sheet and conducted an enquiry against them.

20. The learned counsel for the I party contended that after the enquiry had been once closed, the same had been re-opened at the request of the Presenting Officer in order to fill in the lacuna and thus he was biased. The said aspect has been already considered while dealing with the preliminary issue. The evidence of the Enquiry Officer and the proceedings themselves show that because the workman had given another written statement, it was necessary for the Enquiry Officer to provide further opportunity to the management to adduce its evidence and also to give further opportunity to the I party workman to put forth his case. Since the charge sheet deals with the allegation that the I party workman had Presenting Officer had proposed to examine him and if the Enquiry Officer had provided an opportunity to the workman to cross-examine the said Ganesan. In my view, no bias can be inferred, if the Enquiry Officer has provided further opportunities to both the parties.

21. The learned counsel for the I party strongly contended that the evidence of Napolean and Ganesan are contradictory in as much as they are not certain as to who had gone to the kitchen in the first instance and how the incident had taken place. On main point, the evidence of both the witnesses is corroborative and if there are minor discrepancies, it cannot be said that the appreciation of the evidence by the Enquiry Officer is not correct.

22. The learned counsel for the I party contended that there was no complaint to the police and therefore the evidence of the said witnesses should not have been believed. It cannot be said that merely because there was no police complaint, the entire incident was a concocted one. Secondly, that there was an incident is an admitted fact, but the only contention is whether it was the workman who committed the misconduct or whether the persons who committed misconduct were Napolean and Ganesan. Ex. F-2 dated 31-8-82 is in Tamil and the learned counsel for the I party has filed a copy of the English translation. Immediately on 1-9-82, the management has taken steps to issue Exs. M-6 and M-7. The conduct of the workman in refusing to receive the letter, Ex. M-6 is not consistent with his allegation made in Ex. M-9 against Ganesan and Napolean. The evidence of Ganesan finds support from the earliest document, his complaint Ex. F-2, as marked by the Enquiry Officer. In my view, it was not of much consequence whether Ganesan had given a police complaint or not, for arriving at a conclusion by the Enquiry Officer whether he had committed misconduct or not.

23. The learned counsel for the I party contended that though the evidence on record shows that many others had gathered there, the management did not examine other witnesses and thus the alleged misconduct was not proved. There is no contention raised in the claim statement and it is not the case of the I party workman that he had sought for the examination of any other witness but that the management kept back or suppressed any relevant evidence. It is the lookout of the Presenting Officer to see how best he can put

forth and establish the case of the management. The Enquiry Officer is concerned only with the evidence, as placed before him and to find out whether the charges levelled against the workman have been established or not. It cannot, therefore, be said that the Enquiry Officer committed any error in not calling upon the Presenting Officer to examine any other witness.

24. The learned counsel for the I party submitted that in case where the consequences are grave, such as dismissal, the standard of fairness and reasonableness adopted by civil court will apply and that in the present case the standard of proof as expected is not to be found and that the workman is entitled to reinstatement and consequential benefits. He relied upon the case of P.B. Rocho Vs. Union of India and others (1984 SC page 359). As regards the question of fairness and reasonableness, it has been already observed that the management and the Enquiry Officer have been fair enough to provide him with all the opportunities to defend himself, but he has himself not availed of them. The evidence of Napolean, Ganesan and documents at Exs. E-1 to E-4 constitute satisfactory evidence and even applying the standards as adopted by the civil court, I am of the view that the findings of the Enquiry Officer cannot be called as perverse. The authority further states that the court should also examine whether the conclusion arrived at by the Enquiry Officer is inconsistent with the only rational and fairly possible view. In my view, the findings arrived at by the Enquiry Officer are not at all inconsistent with the rational and fairly possible view. The authority, would, in my opinion is of no assistance to the I party.

25. The learned counsel for the I party further cited the case of the workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and others (1973 I.L.J. page 278). The authority has been relied upon to show that a labour court can come to its own conclusion by giving cogent reasons in regard to the merits of the misconduct and also in regard to the quantum of punishment even in case where proper domestic enquiry has been held. There is no material before me to come to a conclusion that the I party Satyaprakash is innocent whereas Napolean and Ganesan had abused or assaulted the workman Satyaprakash. On the contrary, the report of the Enquiry Officer shows that the findings are supported by cogent evidence.

26. The learned counsel for the I party then relied upon the case of M/s. Bharat Iron Works v. Bhagubhai Balubhai Patel and others (1976 LAB I.C. Page 4). The principle laid down in the authority is that the Tribunal has the right to interfere with the order of dismissal passed by the management on the basis of the findings of the domestic enquiry. There is no dispute as regards the powers of this Tribunal to take a different view from the one as recorded in the domestic enquiry, if the evidence on record justifies the same. In my view, the evidence on record does not justify for a different view.

27. The I party has then placed reliance on the K.C.P. Employees' Association Madras Vs. the Management of K.C.P. Ltd., Madras (1978) (1) LLJ page 322. The authority is with reference to payment of bonus act and it is not pertinent.

28. The learned counsel for the I party has then cited the case of O. P. Gupta Vs. Union of India and others (1987 Supreme Court Cases (L & S) page 400). The authority has been relied upon to show that there is no presumption that Government always acts in a manner which is just and fair. There is no question of the II party contending that there is a presumption that it has acted in a manner which is just and fair. The facts and circumstances of the case have been analysed minutely and on proper appreciation of evidence, it is found that the findings of the Enquiry Officer cannot be called as perverse.

29. The I party has raised a contention in sub para 9 of para 4 of the claim statement that the Enquiry Officer was a subordinate officer to the Presenting Officer and thus the Enquiry Officer was not the proper person to hold the enquiry. In the counter statement, it has been contended that the Enquiry Officer was then the Deputy Divisional Manager on the Sales side in the Divisional Office of Bangalore, whereas the Presenting Officer was the Deputy Installation Manager in the Installation side at Bangalore and that both the units were entirely different. MW-1

Neelakantan, the Enquiry Officer has sworn in para 3 that he was the Deputy Divisional Manager in Bangalore at the relevant time. In para 7, he further swears that the Presenting Officer was only a B. Com graduate and he had no legal qualification that he was then working as a Deputy Installation Manager in the Installation branch, Bangalore.

He has further stated that the installation is in the supply department whereas then he was working in the sales department. He further adds in para 8 that the two departments are entirely different and the officers used to report to different officers. The said evidence has not been challenged. There is no evidence to the contra. It is thus manifest from the record that the contention that the Enquiry Officer was subordinate to Presenting Officer does not hold water. The learned counsel for the I party has placed reliance on the authority of Scooter India Ltd., Lucknow Vs. Labour Court, Lucknow (1989 I. L.L.J. page 71). The facts of the reported case would show that for the distribution of pamphlets, severe punishment had been imposed and in that context, it has been held that even in a case where the enquiry is held to be fair and lawful, the labour court was justified in setting aside the order of dismissal. The facts of the case at hand are entirely different. The principle laid down is not applicable.

30. The learned counsel for the II party has placed reliance on the case of Kanyakumari Automobiles (P) Ltd. Vs. P. Notarajan and another (1983 I. L.L.J. page 323) and contended that it is not a fit case wherein the discretion under Section 11-A can be exercised. The authority states that to grant relief under Section 11-A there must be a finding that the discharge or dismissal is not justified and that unless there is such a finding, there is no power to grant relief under Section 11-A. The learned counsel for the I party has strongly contended that the I party workman is a handicapped person, that he has been honest enough to admit that he has been presently doing milk vending and that he was the victim of collusion between the other workman and therefore the provisions of Section 11-A may be pressed into service. On the other hand, the learned counsel for the II party argued that even during the period of probation, his conduct was not good, that his past record was taken into account and it how that he was not behaving properly and that the management was fully justified in imposing the present punishment. The past record of the workman has been taken into account for the purpose of passing the final order. The contention that the past record has not been shown in the chargesheet is, therefore, not available. The appointment order Ex. W-3 itself shows that he was under probation for 12 months. It is not the case of the workman that anyone in the management was having any grouse against him, except for his allegation that Nepolean and Ganesam used to trouble him often. There is no case of victimisation or vindictiveness on the part of the management. The contention that the management had manipulated certain documents has been rejected. The management has contended that he has committed acts of misconduct falling under Clause 29.1.5, 29.1.6 and 29.1.7. Clause 1.5 deals with the misconduct of committing an act subversive of discipline or good behaviour within the premises of the company in the course of duty. Clause 1.6 deals with use of abusive language within the premises against a good workman. Clause 1.7 deals with refusal to accept any communication in accordance with the Standing Orders. The first two charges have been established by concrete evidence. The Enquiry Officer has held that though the workman has stated that he had not refused to receive the letter on 1-9-82, but he had stated that he would bring some person from the house and would then accept the statement amounted to admission of refusal and thus the third charge also had been proved. Merely because the workman is a handicapped person suffering from hearing defect his conduct cannot be justified and he cannot be permitted to say that he can refuse to accept any lawful communication saying that he would go to his house, consult somebody and then he would return and accept the same. In my view, the finding on the third charge is also correct.

31. Looking from any angle, I do not find that it is a fit case to invoke provisions of Section 11-A of the I.D. Act. The order of dismissal is commensurate with the act of misconduct.

1377 GI/89-2

32. In the result, an award is passed to the effect that the management of M/s. Bharat Petroleum Corporation Ltd., Bangalore was justified in terminating the services of Shri Satyaprakash, ex-employee with effect from 28-2-1983 and that he is not entitled to any relief.

B. N. IALGE, Presiding Officer  
[No. L-30012/39/88-D.II(B)]

नई दिल्ली, 25 मई, 1989

का.आ. 1318—औद्योगिक विवाद अधिनियम, 1947 (1947 क. 14) की धारा 17 के अनुसार में, फेलीप मरकर जयपुर मिनरल डिव्हिल सिन्डीकेट (प्रा.) लि. जयपुर के प्रबन्धन से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकारण, जयपुर के पंचपट को प्रकाशित करती है, जो केंद्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

New Delhi, the 25th May, 1989

S.O. 1318.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Jaipur Mineral Development Syndicate (P) Ltd., Jaipur and their workmen, which was received by the Central Government on the 16-5-1989.

अनुबंध

केंद्रीय औद्योगिक अधिकारण, जयपुर।

केन. सं. सी. भाई. टी. 4/88

फॉरम  
माननीय मरकर, अम मंत्रालय, नई दिल्ली  
दो दावा क्रमांक प्रा. 29011/31/87-डी. III (वी) दिनांक  
29-12-87]

अनरुल सेट्री, भार. के. एम. सी.  
एस. एस. एम. मुख्य वायालिय, देवडीजी  
का मन्दिर गोहरी बाजार, जयपुर (राजस्थान)  
— प्रार्थी दश

विवाद

चोक प्रकाशन इंडिया,  
जयपुर मिनरल डिव्हिल सिन्डीकेट प्रा.लि.  
प्रेम प्रकाश एस. एम. एम. हाईवे जयपुर  
(राजस्थान)

प्रियोगक पथ

उम्मिया।

माननीय व्याधीय श्री प्रतान मिह यादव आर.एच.जे.एम.  
गवर्नर की ओर से :

कोई नहीं

द्वारा दावा की ओर से :

श्री भार. सी. पाठीवाल

अधिकार्ड दिनांक

30-12-88

अवादः

माननीय मरकर अम मंत्रालय नई दिल्ली के अम मन्त्रिय ने उनकी दावा क्रमांक प्रा. 29011/31/87-डी. III (वी) दिनांक 29-12-1987 निम्न विवाद अनुसार धारा 10 (1) (घ) उनवारा एवं 2 (क) औद्योगिक विवाद अधिनियम 1947 जिसे राजस्थान अधिनियम निवा जारीगा। वास्ते अधिनियमार्थ इस व्याधीय दावा को देजा है।

विवाद

“का. जयपुर मिनरल डिव्हिल सिन्डीकेट प्रा. लि. जयपुर के प्रबन्धन की केवल सूचतान मजदूरी देने को कार्रवाई नायोजित

है जबकि दबोटा में सोप स्टोन भज्वर मिलने 5 दबाकों से जारी कर रखी है, यदि नहीं तो कर्दकार किस दर से मजबूरी के हकदार हैं।"

बाद प्राप्त उक्त निर्देशन इस न्यायाधिकरण ने पंजीकृत किया था। उसमें प्रबन्धकारी को नोटिसेज भी न्यायाधिकरण में उत्तम्यता अन्ते के लिये जारी किये गये। जनरल सेकेटरी राष्ट्रीय खनन मजबूर कार्पोरेशन सोप स्टोन माइनिंग दबोटा ने दिनांक 17-3-88 को निम्न स्टेटमेंट आफ कॉर्पोरेशन प्रस्तुत किया। यह की राष्ट्रीय खनन मजबूर कार्पोरेशन सोप स्टोन माइनिंग दबोटा नियुक्त पंजीकृत एक पंजीकृत संघ है जिसमें मिनरल डबलपर्सेट मिल्डीकेट में कार्यस्थल प्रबन्धकम अधिक इस यूनियन के सदस्य है। जो प्रबन्धकम द्वारा सन्तुरा प्राप्त संव दै। अन्ते अवक्त किया कि प्रार्थी यूनियन ने अप्रार्थी प्रबन्धक से मांग को कि शुल्क अर्धकुशल कामकारों का, सन् 1980-81 तक पेस्टेल में बेतन दिया जा रहा था। तथा नंदाई खनन इस दिवाने से निर्वाचित था। परन्तु सन् 1981 में सभी निम्न के कामकारों को शून्यतम बेतन दिया जाना प्रारम्भ कर दिया जिसका अप्रार्थी प्रबन्धक ने कोई कारण नहीं बताया। इसलिये सभी किसके कर्दक रों को सन् 81 से बेतन शुल्क में बेतन मिलना चाहिए था जैसा कि पूर्व में मिल रहा था। आगे यूनियन को मांग को नियकर कुशल और अर्धकुशल के सरकेस (ओपनकार व फ्लॉड-प्राउड) में बांग करने वालों के लिये क्रम से एक से गाँज तक मांग बेतनमान का ब्यौरा दिया (और यह सभी व्यक्त किया कि अप्रार्थी प्रबन्ध के संस्थान में कार्यस्थल अधिकारों को शून्यतम बेतन दिया जाना न्यायसंगत नहीं है। प्रार्थी यूनियन ने मांग न मानने पर आन्दोलन किया अप्रार्थी प्रबन्धक ने आन्दोलन दिया कि सभी अधिकारों को पेस्टेल में बेतन देना प्रारम्भ कर दें। आन्दोलन समाप्त करी तो यूनियन ने आन्दोलन समाप्त कर दिया। सभी कामकारों ने अपना अवना कार्पोरेशन कार्पोरेशन करना प्रारम्भ कर दिया जाने अवक्त किया कि अप्रार्थी प्रबन्धक ने 5 अप्रैल 1987 को आयात किया था कि हरेक अधिक प्रार्थी पक्ष तथा सहायक अधिक आपुक्त केंद्रीय मिल जो भी बेतन मात्र हेतु उसे स्कीमकार कर दिया जाएंगे, परन्तु अप्रार्थी प्रबन्धकों ने उसे सभी वार्ता के अन्दर अस्वीकार कर दिया। अतः प्रार्थी को सभी किसके कामकारों को शून्यतम देना बेतन देना अवैध एवं अनुचित घोषित कर देने वृद्धमार्गों कर देने महाई तथा बी.डी.ए. सार्वजनिक भवानों, मकान विरासा एवं हाई ड्यूटी आन्दोलन दियाजा जावे। प्रार्थी ओंकार एक्सोफ्लॉटिव जिसुर मिनरल डबलपर्सेट मिल्डीकेट प्रा. नि. जिसुर को ओंकार से यूनियन ने स्टेटमेंट आफ कॉर्पोरेशन का ईतर निम्न प्रकार से पेण किया।

मर्याद प्रथम प्रारम्भिक आपत्तियों इस प्रकार उत्तराई गई: यह कि केंद्र सरकार ने जो विवाद इस न्यायाधिकरण के सबका थारो अधिनियायार्थी भेजा है वह यात्रा है, न तो इस प्रकार का कोई विवाद अधिकारों को तरफ से प्रबन्धकों के समक्ष प्रस्तुत किया गया ना ही प्रबन्धकों ने ऐसी नियोगी मांग को आस्वीकार किया। जो विवाद न्याय नियोगी भेजा गया है। वह आधारिक विवाद की अधिकारों में नहीं आता है। आगे एनराज किया कि जो विवाद प्रस्तुत किया गया है वह श्री सरदारलालग शर्नो महामंत्री राष्ट्रीय खनन मजबूर कार्पोरेशन सोप स्टोन माइनिंग दबोटा की ओंकार से प्रस्तुत किया गया है श्री शर्नो राष्ट्रीय खनन मजबूर कार्पोरेशन सोप स्टोन माइनिंग दबोटा के महामंत्री है, या नहीं, इह तथ्य की जानकारी विद्यों को नहीं है जो विवाद प्रस्तुत किया गया है वह यात्रा करने वाले से यात्रा प्रार्थितिव के आधार पर प्रस्तुत किया गया है। जो इस आधार पर चलने वायग नहीं है। यह सभी लिया कि राष्ट्रीय खनन मजबूर कार्पोरेशन सोप स्टोन माइनिंग अवोटा विद्यों संस्थान में कोई मान्यता प्राप्त यूनियन नहीं है। इस यूनियन की मान्यता विद्यों प्रबन्धकों द्वारा दिनांक 19-3-88 को ही समाप्त कर दी गई है ऐसी स्थिति में इस आधार पर सभी प्रस्तुत कॉर्पोरेशन को कोई आंतिम नहीं है। आगे यह सभी कहा कि नवायित राष्ट्रीय खनन मजबूर कार्पोरेशन विद्यों संस्थान में कार्यस्थल अधिकारों का प्रतिनिधित्व भी नहीं करती है। ऐसी स्थिति में प्रस्तुत विवाद आर्टिज होने वायग है। आगे यह एनराज किया कि प्रार्थी यूनियन द्वारा विवाद

प्रबन्धकों के समक्ष इस मद में विभिन्न भाग कभी नहीं उत्तराई जो मांग पत्र य नियत द्वारा प्रस्तुत किया गया था। इस मांग पत्र में भी किया मई में विभिन्न सभी कोई हताला नहीं है और ना तो श्रम समझौता अधिकारी के गमन ही इस प्रकार का कोई विचार उठाना दिया गया। सभी भागों भी अधिकारी ने जो असकलना प्रतिवेदन केंद्रीय सरकार को प्रस्तुत किया है उसमें भी इस मद में विभिन्न सभी के बारे में कोई हताला नहीं है वैत भी श्रम द्वारा शून्यतम संघर्ष करने वाले अधिकारों के लिये केंद्रीय, सरकार द्वारा शून्यतम वेतन निर्धारित हुआ है अंग एक के अन्य सभी विद्यों संस्थान प्रबन्धकों वाले के बारे के बाबत के बुलाया फरता है जो शून्यतम वेतन केंद्रीय सरकार द्वारा विवरित हुआ है। उसमें ही सभी प्रशासन के लिये समिति है। प्रार्थी यूनियन को यह मांग को महाई नहीं, बी.डी.ए. मानन किया तो मही, हाई इंटर्लैट्रिक अनाउन्ड मजबूरों को दिया जावे। उनक न को कोई अंतिम है और वह इस प्रशासन के लिये विवाद में है। इस खेत में अन्य व्याकों दर वार्षिक मजबूरों को शून्यतम वेतन अधिनियम के तहत नियर्थित शून्यतम वेतन ही सम्बन्धित प्रबन्धकों द्वारा दिया जा रहा है। केंद्र स्टेटमेंट के दैव नंबर 6,7,8, 9,10,11,12, को गलत होने से प्रस्तीत किया: अंग प्रार्थी को नियोगी वार्षिक दिया जावे। इष्व विवाद में दिनांक 29-11-88 को अप्रार्थी नियोजक की ओंकार से स्टेटमेंट आफ कॉर्पोरेशन किया अंग आनावी तारीख पेशी 30-12-88 प्रार्थी के पेश होने के लिये नियत की गई। न तो यूनियन को अंग दे कोई उपरेक्षा हुआ अंग ना ही शून्यतम की ओंकार से कोई प्रोत्साहन दिये गये। यूनियन को ओंकार से न आने का कोई वार्ष भी नहीं किया गया। अप्रार्थी नियोजक को ओंकार में थी आर.सी.पाडोवाल अधिकारी ने मिनरल डबलपर्सेट मिल्डीकेट प्रा. नि. से चार प्रोक्टों को फाटो प्रार्थी पेश की गई। प्रार्थी यूनियन का कई वर्तवार अवाजे भी लगायी गई मजर यूनियन को ओंकार से कोई उत्तराई नहीं हुआ। ऐसा प्रांत होता है कि यूनियन को इस विवाद को आगे बढ़ाने में विवरी नहीं है और वह आगे स्टेट नहीं ले रहे हैं। इन चारण से कोई विवाद जो यात्रा गया हा, ऐसा प्रांत नहीं होता है इन्हिये नोज्वा विवाद में नो इंटर्लैट्रिक आवार्ड दिया जाता है। अप्रार्थी का प्रतिवेदन केंद्रीय सरकार का अन्तर्वार्ता (7) (1) अधिनियम के तहत प्रकाशित भेजा जावे।

न्यायाधीश, केंद्रीय औद्योगिक न्यायाधिकरण, जिसुर  
प्रांत विवाद, नियर्थित

[नं. एस-2901/31/87-वा.III (ब)]

नई विनांक, 26 अ०, 1989

का.आ.1319:—ओदीप्रिय विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुपर्यामे, केंद्रीय सरकार एवं सं.प्र.प्र. को चांदमाली कार्पोरेशन रिप्रेजेन्टेट्व, पोस्ट ब्लॉडीकॉर्प, विवाद विवाद के प्रस्तुत विवादकों और उनके कर्मकारों के बारे अवैध एवं अवैध में नियर्थित औद्योगिक विवाद में औद्योगिक अधिकारण जिसुर के नवायित का प्रतिवेदन करती है, जो केंद्रीय सरकार द्वारा 19-5-92 दा गा हुआ था।

New Delhi, the 26th May, 1989

S.O. 1319.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Chandmali Copper Project of HCL Post. Khetrinagar, Dist. Jhunjhunu and their workmen, which was received by the Central Government on 16-5-1989.

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

मानसीय न्यायाधीश श्री प्रताप मिह यादव, आर.एच.जे.एस.  
केस नं. सी.आई.टी. 39/88।

मध्य

महामूर्ति, हिन्दुस्तान कापर मजदूर संघ, ई-70,

कोटीहनून नगर, पां, ब्लैक्सी, राजस्थान।

एवं

प्रोजेक्ट प्रबंधक, चांदमारी कापर प्रोजेक्ट आप एच.सी.नि.  
पा. ब्लैक्सी नगर, जिला सुन्दरबुन।

रेफरेंस अंतर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947

उत्तराधिकारी

प्रताप की वारों : काई उत्तराधिकारी नहीं  
निवासिक को ओर में : कोई उत्तराधिकारी नहीं  
दिनांक अधार्ड : 15-3-89

प्रधार्ड

भारत सरकार के थान मंत्रालय के डेस्क अधिकारी ने उनकी अधिकृता मं. 7(1)/नाल. II/झी-III (झी-II(ए) दिनांक 17-1-88 के द्वारा अंतर्गत धारा 10(1)(घ) औद्योगिक विवाद अधिनियम, 1947 जिसे आगे अधिनियम कहा जायेगा, निम्न विवाद उम्म न्यायाधिकरण को बास्ते अविनियम हेतु प्रस्तुत किया है :—

“का। एवं सी.नि. के चांदमारी कापर प्रोजेक्ट ब्लैक्सी नगर के प्रबंधताल की थीं पा. हुन्ड्रेड सौं को जूनियर फारमैन (माईनिंग) भया वी.एच.झी. प्रसिटेंट के रूप में क्रमांक 22-10-84, 26-9-79 में पदोन्नत न करने की कार्रवाई न्यायोचित है क्योंकि विभागीय पदोन्नति समिति कमी नहीं हुई थी जबकि धारा एड पां नियमों के अनुसार विभागीय पदोन्नति समिति द्वारा 75 प्रतिशत तथा सीधी भर्ती द्वारा 25 प्रतिशत रिक्तियों का भरा जाना था जबकि कमाल का सीधी भर्ती के माध्यम से ज्यन किया गया था ? यदि नहीं सीधी कमाल किस अनुतोष का हकदार है ?”

2. उत्तराधिकारी विवाद निदेशन को इस न्यायाधिकरण में पंजीकृत किया जाकर अधिनियम नोटिस दिये गये। यह निदेशन इस न्यायाधिकरण में 2-7-88 को प्राप्त हो गया था उसके पश्चात् दिनांक 4-8-88 को फोरेंट को ओर से काई उत्तराधिकारी नहीं आया। जबकि यूनियन को विशेष तौर से अपना स्टेटेंट भाक केमें प्रस्तुत करने का निर्देश दिया और नोटिस भी इस न्यायाधिकरण की तरफ से जारी किया गया। तपश्चात् 23-9-88 का प्रबंधक चांदमारी कापर प्रोजेक्ट के अधिकत प्रह्लाद ने दिनांक 23-9-88 को नोटिस प्राप्त किया था महा सचिव हिन्दुस्तान कापर मजदूर संघ, ई-70 कोपिहान नगर, ब्लैक्सी के अधिकृत मेम्बर ने दिनांक 30-9-80 की नोटिस प्राप्त विधा उसके पश्चात् भी दिनांक 31-1-89 को पुनः जारी किया हुआ नोटिस नियोजक को ओर से प्राप्त किये गये। फिर भी प्राप्त काई प्रश्नाग्र उत्तरित नहीं हुआ त ही प्राप्त यूनियन और नहीं प्रबंध-संघ को आर से काई हासिर है। वैसे भारत सरकार के डेस्क अधिकारी ने सीधे ही उथय पक्षाधारान को रेफरेंस को प्रति देनी ही और उसमें विवेष और से ये निदेशन आदेश दिया है कि जिस पार्टी द्वारा यह विवाद उदाया गया है वह इस न्यायाधिकरण में निदेशन को प्रतिलिपि प्राप्ति के 15 विवर के अन्दर स्टेटेंट भाक केमें संगत प्रलेख और गवाहों को विस्त महित पेश करेगा और उसको प्रति विवाही को अंतर्गत नियम 10(घ) औद्योगिक विवाद (केन्द्रीय) नियम 1957 के तहत देनेगा मरा इस निदेशन के पश्चात् यो और हम न्यायाधिकरण हुआ थे बर नोटिस नियान जान और प्राप्त कर लेने के बाद भी प्राप्त यूनियन की ओर से जाई प्राप्तिन नहीं आया। इसने ऐसा प्रतीत होता है कि

यूनियन को इस विवाद को चलाने में काई सक्षि नहीं है जिन्हें यह अनुमति निकाला जाता है कि पक्षाधारान के मध्य कोई विवाद शेष नहीं रह गया है अर्थात् इस विवाद के संबंध में कोई विवाद नहीं का पंचाट परिलिपि किया जाता है, जिसे बास्ते प्रकाशनार्थ केन्द्रीय सरकार को अंतर्गत धारा 17(1) अधिनियम भेजा जाये।

प्रताप सिंह यादव, न्यायाधीश

[सं. एल-7(1)/86 कान-II/झी III (झी)]

का.प्रा. 1320.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार श्री ओम प्रकाश नेसर्स बजरंग लाल बद्रीलाल गुप्ता, माईन ओनर, मुमेरांज मण्डी के, प्रबंधताल से सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकारण, जयपुर के पंचाट को प्रतापित करती है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1377.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Shri Om Prakash, M/s. Bajrang Lal Badrilal Gupta, Mine Owner, Sumergan mandi and their workmen, which was received by the Central Government on the 16-5-1989.

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

मानसीय न्यायाधीश श्री प्रताप सिंह यादव, आर.एच.जे.एस.  
केस नं. सी.आई.टी. 7/87

मध्य !

मन्त्रिव, पर्यावरण लेवर यूनियन, इन्डोनेश्यन द्वारा द्वारा जिला।

एवं

ओम प्रकाश गुप्ता श्री बद्रीलाल गुप्ता माईन अनुबंध लाल बद्रीलाल गुप्ता मुमेरांज मण्डी, जिला भर्ती।

रेफरेंस अंतर्गत धारा 10 (1) (घ) ओ.वि. अधिनियम एवं भाषार 2(ए) उपधारा 10 ओ.वि. अधिनियम 1947

उपरिचय

प्राप्त यूनियन की ओर से : श्री जर्मी लाल शाह  
(जिन्हें हिंदायत न होना अकृत किया)

प्राप्त नियोजक की ओर से : कोई उपस्थित नहीं।

दिनांक अधार्ड : 15-3-89

प्रवाह

भारत सरकार के शाम मंत्रालय के अधिकार सचिव ने उनकी अधिवृक्षना मं. एल. 29011-28/85 झी-III (झी) दिनांक 12-2-87 निम्न विवाद अंतर्गत धारा 10(1) (घ) औद्योगिक विवाद प्रबंधित अधिनियम 1947 जिसे तपश्चात् अधिनियम निया जायेगा वास्ते अधिनियम हेतु इस न्यायाधिकरण को प्रस्तुत किया है :

“का। श्री ओम प्रकाश मैसर्स बजरंग लाल बद्रीलाल गुप्ता माईन और मुमेर जंग मण्डी की औद्योगिक विवाद अधिनियम 1947 की धारा 25 (घ) का उल्लंघन करते हुए श्री गोपी लाल श्री लालूराम और श्री मानो लाल सेनो की सेवाओं को 1-2-85 से समाप्त करने की कार्रवाई न्यायोचित है ? यदि नहीं तो ये कर्मकार जिस अनुतोष के हकदार हैं ?”

2. उत्तरोक्त निदेश को इस न्यायाधिकरण में दिनांक 16-2-87 को प्राप्त होने पर पंजीकृत किया गया और उम्मी पक्षकारान को नोटिस जारी करने के अविषय विवेद योगे। काफी अक्षर विवेद जाने पर अधिक पत्थर खान लेवर यूनियन इन्डस्ट्रीज ने आगाम स्टेटमेंट आफ क्लेम संक्षिप्त में निम्न प्रकार से पेश किया। यह कि पत्थर खान लेवर यूनियन इन्डस्ट्रीज जिसे तत्पश्चात् यूनियन के नाम से सम्बोधित किया जायेगा एक पंजीकृत यूनियन है और बड़ी जिले में विभिन्न खानों में कार्य करने वाले अमिक इस यूनियन के सदस्य हैं। मैसर्स बजरंग लाल बड़ी लाल खान मालिक मुमेर गंज मर्जी जिला बड़ी खान के मालिक हैं जिन्हें प्रागे विवशो लिखा जायेगा श्री गोपीलाल, श्री लालूराम श्री मध्यन लाल सेनी, प्रार्थी यूनियन के सदस्य हैं जो विवशी की खान पर गत 8 बर्षों से लगातार पीसेरेट के रूप में कार्य करते था रहे हैं जो पत्थर तोड़ने का कार्य करते थे। यह कि अमिक गोपीलाल, लालूराम व सेनी को दिनांक 1-2-85 से मालिक आदेश द्वारा सेवा नुक्त कर दिया। सेवा समाप्ति के पश्चात भी ये तीनों अमिक रोजाना उनको इन्डस्ट्री पर जाते रहे भगवर उनकी सेवायें बहाल नहीं की। तत्पश्चात् अमिकों ने पत्र लिखकर उनकी सेवा बहाल करने की मांग की। पत्थरात् इन तीनों अमिकों का यूनियन ने विवाद सहायक अम आयूक्त (कंट्रीय) जोटा के समझ पेश किया परन्तु बहाल समझीला नहीं हुआ और इसे भारत सरकार को अप्रत्येकन योग किया गया। अतः यह अक्त विवाद किया गया कि इन तीनों अमिकों ने सेवा समाप्ति से पूर्व 240 दिन से अविक कार्य किया है। और उन्हें सेवा नुक्त करने से पूर्व न तो एक माह का नोटिस दिया गया और न ही एक माह के नोटिस के एवज में एक एक माह का बेतन दिया गया तथा अमिकाण को छंटी का मुद्रावजा भी नहीं दिया गया है। इसलिए उनकी सेवा मुक्ति घारा 25(एफ) अविनियम के विवरीत की गई जो प्रभाव हीन है। यह भी आरोप लगाया कि इन अमिकाण से जूनियर अमिकों की सेवा समाप्त नहीं की गई इसलिए भी उनको सेवा समाप्ति अवैध थी और अंत में यह भी आरोप लगाया कि इन तीनों अमिकाण की सेवा मुक्ति के बाद नये अमिकों को नियुक्त किया गया और उन्हें उनके लिए सुनित नहीं किया गया। अतः प्राविना है कि अमिकाण श्री गोपीलाल लालूराम एवं मगल लाल सेनी की सेवामुक्ति को अवैध घोषित किया जाये और पिछले पूरे बेतन सहित उन्हें सेवा में बहाल किया जाये। यूनियन को जो और से उक्त स्टेटमेंट आफ क्लेम का जशाव प्रस्तुत नहीं किया गया और दिनांक 13-7-80 को विवशी के बिलाक इकान्तका कार्यवाही किये जाने का आदेश पारित किया गया। श्री जयंती लाल शाह अधिकारी प्रतिनिधि प्रार्थी यूनियन के प्रार्थीण के पत्र में बस्तावेजात व साक्ष्य प्रस्तुत करने का आदेश दिया गया परन्तु तीन अवसर दिये जाने के पश्चात् न तो यूनियन की ओर से प्रेक्ष ही पेश किया और न ही कोई साक्ष्य ही पेश की। यहां तक कि प्राप्त दिनांक 15-3-89 को पुनः कोई साक्ष्य उपस्थित नहीं गई और न ही कोई प्रेक्ष प्रस्तुत किये। श्री जयंती लाल शाह अधिकृत प्रतिनिधि प्रार्थी यूनियन ने तो इन्टर्क्षेप्ट्स प्लीड की। ऐसी सूत्र में प्रार्थीण को साक्ष्य समाप्त की गई। प्रार्थी यूनियन ने जो अमिकाण गोपीलाल, लालूराम एवं मगल लाल सेनी को सेवा समाप्ति घारा 25 (एफ, एच और 25 (जी) का उल्लंघन में विवाद जाना जो स्टेटमेंट आफ क्लेम में अक्त किया है उनके संबंध में पत्रावली में कोई साक्ष्य प्रस्तुत नहीं हुई और न ही कोई प्रेक्ष प्रस्तुत हुआ। अतः प्रार्थी यूनियन के द्वारा जो स्टेटमेंट आफ क्लेम पेश किया है उसे वह प्रमाणित करने में अप्रत्यक्ष रहे हैं और प्रार्थी यूनियन कोई अनुतोष पाने के अधिकारी नहीं है। अतः प्रार्थी यूनियन के विरुद्ध निम्न प्रश्न उपस्थित किया जाता है कि—

यह कि मैसर्स बजरंग लाल बड़ी लाल मार्ईन औनर, मुमेरगंज मर्जी, जिला भूलाला के द्वारा श्री गोपीलाल, लालूराम एवं श्री मगल लाल की सेवा समाप्ति 1-2-85 को घारा 25(एफ) श्रीयोगिक विवाद अधिनियम के उल्लंघन में किया जाना प्रमाणित नहीं होता है। इस कारण से इन अमिकों की सेवा समाप्ति के संबंध में प्रार्थी यूनियन कोई अनुतोष पाने की अधिकारी नहीं है। अतः उक्त आदेश का पंचाट पारित किया

जाता है जिसे आस्ते प्रकाशनार्थ केन्द्र सरकार को अंतर्गत घारा 17(1) अधिनियम भेजा जाये।

प्रताप सिंह यादव, न्यायाधीश

[म. एल-29011/28/85-डी-III (बी)]

का.आ. 1321.—श्रीयोगिक विवाद अधिनियम, 1947 (1947 का 14) की घारा 17 के अनुसरण में, केन्द्रीय सरकार भै. गोपीलाल स्टेटमेंट कम्पनी, फलोदी क्वारीज, मवाई माधोपुर के प्रबंधनत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में विविट श्रीयोगिक विवाद में श्रीयोगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती हैं, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1321.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Geeta Transport Co. Phalodi Quarries, Sawai Madhopur and their workmen, which was received by the Central Government on 16-5-1949.

केन्द्रीय श्रीयोगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 20/85

केन्द्र सरकार के श्रम मंत्रालय की अविभूतना सं. एल-29011 (57)/84-डी-III (बी) दिनांक 26-4-85।

सचिव, भारतीय खान यातायात कर्मचारी संघ, फलोदी, सवाई माधोपुर।

—यूनियन

अन्याय

मै. गोपीलाल स्टेटमेंट कम्पनी, फलोदी क्वारीज, सवाई माधोपुर।

—नियोजक

उपस्थिति

माननीय न्यायाधीश श्री प्रताप सिंह यादव, आर.एच.जे.एम.

यूनियन की ओर से: कोई उपस्थित नहीं

नियोजक की ओर से: कोई उपस्थित नहीं।

दिनांक प्राप्तार्थी

5-11-88

प्रयोग

भारत सरकार के श्रम मंत्रालय के अण्डर सेक्रेटरी ने उनकी अधिकृतना सं. एल. 29011 (57)/84-डी-III (बी) दिनांक 26-4-85 के द्वारा निम्न विवाद अंतर्गत घारा 10(1) (बी) श्रीयोगिक विवाद अधिनियम आस्ते अधिनियम इस न्यायाधिकरण को मेजा है।

“Whether the action of the management of M/s. Geeta Transport Co., Loading and Transport Contractors in Phalodi Quarries of M/s. Jaipur Udyog Ltd., Sawai Madhopur in terminating the services of Shri Durga Lal Driver S/o. Shri Badri Lal with effect from 14-9-84 is justified. If not, to what relief Shri Durga Lal, Driver is entitled for?”

2. बाबू प्राप्ति निदेशन इग रेफरेंस को इस न्यायाधिकरण में पंजीकृत किया गया। उम्मी पक्षकारान को नोटिस जरिये पंजीकृत इक ज्ञेजे गये प्रार्थी दुर्गलाल ने उनकी सेवा समाप्ति के संबंध में निम्न स्टेटमेंट आफ क्लेम पेश किया। यह कि गोपीलाल स्टेटमेंट कम्पनी द्वी जयपुर उद्योग नि. सवाई माधोपुर के यहां खानों से पत्थर की कुनाई का काम उनके द्वारा द्वारा करते हैं। कार्यवेत्र फलोदी क्वारीज जिला सवाईमाधोपुर है। प्रार्थी यह अक्त किया कि प्रार्थी दुर्गलाल उपरोक्त गोपीलाल स्टेटमेंट कम्पनी में सेवा समाप्ति के तीन वर्ष पूर्व से द्वासावर के पद पर 520 स्पेय प्रतिमाल देतान पर कार्य करता था। प्रार्थी आगे लगाया कि प्रार्थी के क्षात्रिय रद्दने

दूसरी भी नियोजक कमीशी भी गैर हाजिरी लगा देते थे और बैठक काट देने थे तथा माप्ताहिक अधिकार भी नहीं देते थे जिसके बारे में प्रार्थी ने विकायत उसकी यूनियन के माध्यम से चीफ मैनेजर माइन जप्युर उद्योग नि. फॉलोइंग क्वोरी सवाईमाधोपुर व अन्य अधिकारियों को भी । इस विकायत से नागर छोड़कर श्री वलराम मिह जी पार्नेन गीता डामपाट कम्पनी ने जवाबी आवेद द्वाग बिना मुआधिगा व नोटिंग दिये दिनांक 1-4-9-84 को उसे सेवा मुक्त कर दिया । इस बारे में विकायत प्रार्थी ने भारतीय यातायात कंपनीरी संघ के सचिव श्री रघुराज मिह को की जिन्होंने इस विवाद को चीफ मैनेजर माइन और अम विभाग भारत मर्गसर के समक्ष उठाया । पश्चात् ममझीता बातों असफल हुई और वे नियोजन केन्द्रीय सरकार द्वारा इस न्यायाधिकरण को भेजा गया । अत में प्रार्थी की कि उसकी सेवा मुक्ति अनुचित एवं अकैद घोषित की जाये और प्रार्थी बैठक से अन्य मुविधा सहित उसकी सेवा बहाल की जाये ।

3. मैं गीता डामपाट कम्पनी पॉलीटी क्वोरी ने उनके भागीदार श्री विजय कुमार सूरी के द्वाग निम्न स्टेटमेंट आफ क्लेम प्रस्तुत किया । जिसमें स्टेटमेंट आफ क्लेम के रैग म. 2, 3 को अर्प्तीकार किया, केवल यह स्वीकार किया कि अप्रार्थी कम्पनी द्वाग दी जप्युर उद्योग लि. सवाईमाधोपुर के यहां ज्ञानों से पत्थर की कुलाई का काम केवल ट्रकों द्वाग टेके पर करते हैं । ये भी माना कि उनका कार्य क्षेत्र क्लीटी भैरों है । मगर विशेष विवरण में यह व्यक्त किया कि प्रार्थी गीता डामपाट कम्पनी के नियोजन में से नेवा मुक्ति की तारीख से 3 वर्ष पूर्व से कार्य नहीं कर रहा है विलिंग मर्हा बात यह है कि प्रार्थी ट्रक नं. श्रार.जे.यू. 1571 पर कार्य करता था । इक नं. श्रार.जे.यू. 1571 का पजोहन स्वामी भै० पुरुषोत्तम ट्रांसपोर्ट कम्पनी है तथा पुरुषोत्तम डामपाट कम्पनी ही इस ट्रक पर ड्राइवर, खल्मामी एवं लोडिंग अनलोडिंग को अभिक नियुक्त करती है और यही फर्म इनको सेवा मुक्त कर सकती है । नियोजन एवं गोदा मुक्ति से गीता डामपाट का कोई संबंध नहीं है । आगे यह व्यक्त किया कि ट्रक नं. श्रार.जे.यू. 1571 अप्रार्थी कमंडे के यहां अधिकार कार्य करता है जिसकी एवज में अप्रार्थी फर्म ट्रक के पजीकृत स्वामी से नियुक्त कमीशन लेती है तथा इसके बदले अप्रार्थी फर्म ट्रक के पजीकृत स्वामी को ट्रक का मुआध रूप से खलाने के लिए रुपयों की अरुत्तर पड़ने पर एडवेंचर पैसा भी देती है । इस प्रकार इस ट्रक पर कार्यरत अभिकों को यैनत भूते इत्यादि के भूततान की जिम्मेदारी पुरुषोत्तम ट्रांसपोर्ट कंपनी भी है । आगे यह भी एतराज किया कि पुरुषोत्तम डामपाट कंपनी आधिकरण पकारार और इसके आवासक पकारार नहीं शोने की मूरत में प्रार्थी का भूतम चलने योग्य नहीं है । इसे नकारा की अप्रार्थी कम्पनी ने प्रार्थी को कमीशन किया जाने में रखा था या नियुक्त किया हो । आगे यह भी बताया कि दिनांक 2-9-85 से अप्रार्थी फर्म को समाप्त करने के जप्युर उद्योग नि. का पत्थर की कुलाई का कार्य बद कर दिया है यद्योंकि टेक की अवधि समाप्त हो चुकी है । प्रार्थी का कोई सेवा बहाली का अधिकार नहीं है न ही वे अन्य कई मुविधायें प्राप्त करने का अधिकारी है । अतः स्टेटमेंट आफ क्लेम मय छर्वा खारिज करने की प्रार्थना की ।

4. तत्पश्चात् पकायती को वास्ते वेष करने दस्तावेजात के लिए नियुक्त किया जाता रहा इसके बावजूद भी कई अवसरों को दस्तावेजात वेष नहीं किये गये और कई मर्हा अप्रार्थी उपस्थित भी नहीं हुए । दिनांक 1-7-87 को विषयी के उपस्थित न होने के कारण इकतरफा कार्यवाही किये जाने का आदेश परित किया गया । तत्पश्चात् प्रार्थी की साथ्य के लिए प्रकरण 20-7-87 को प्रार्थी की ओर से उनके अधिकृत प्रतिनिधि दर्शी से जारित आये और पकायती दिनांक 2-9-87 को वास्ते प्रार्थी की साथ्य के लिए नियत किया गया और उम रोज भी प्रार्थी की ओर से साथ्य वेष करने के लिए समय चाहा गया । उसके पश्चात भी पुनः दिनांक 6-10-87 को प्रार्थी की ओर से प्रत्येक व साथ्य वेष करने के लिए इस विवाद को 12-1-87 को नियत किया गया । पुनः 12-1-87 को साथ्य वेष करने के लिए अवसर लिया गया तत्पश्चात् 7-12-87 को प्रार्थी ने अधिकृत प्रतिनिधि ने वेशों जाह्ने वालन प्रार्थना-पत्र वेष किया और उसकी प्रार्थना स्वीकार कर । पकायती को 18-1-85

के लिए साथ्य वेष करने का भीका दिया गया तात्पश्चात् दिनांक 18-1-88, 7-3-88, 13-4-88, 16-5-88, 22-7-88 व 14-9-88 को साथ्य वेष करने के लिए अवसर दिये जाते रहे मगर प्रार्थी की ओर से कोई साथ्य वेष नहीं किया गया । आज दिनांक 5, नवम्बर 1988 को प्रार्थी की ओर से कोई उपस्थित नहीं आया न कोई साथ्य ही वेष किया गया है और न ही कोई प्रार्थना पत्र बाबत इनका वेष हुई है । ऐसी सूचन में ऐसा प्रतीत होता है कि प्रार्थी इस विवाद को अपनाने के लिए इच्छा नहीं रखते हैं । और भारत न वेष करने की सूचन में ऐसा अतीत बोता है कि कोई विवाद प्रार्थी व प्रार्थी के बीच नहीं रह गया है अतः इस विवाद के मिलिए “कोई विवाद नहीं” का प्रबाहुं पारित किया जाना है, जिससे प्रकाशनाथ केन्द्र सरकार का अधिनंदन धारा 17(1) अधिनियम भेजा जाये ।

प्रताप मिह यादव, न्यायाधीश

[ग. ए-29011/57/8-ए-III (बा)]

क्र० ग्र० 1322—श्रीसंगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुरूप में, केन्द्रीय सरकार श्री विमल कुमार, माइन ऑनर, लाखीरी, बुर्दी (गाजस्थान) के प्रबन्धतत्त्व में संबंध नियोजकों और उनके कर्मकारों के बाच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रीसंगिक अधिकरण, जप्युर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था ।

S.O. 1322.—In pursuance of & Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Shri Vimal Kumar, Mine Owner, Lakhri, Bundi (Raj.) and their workmen, which was received by the Central Government on the 16-5-1989.

#### परिशिष्ट

केन्द्रीय श्रीसंगिक न्यायाधिकरण, जप्युर ।

गाननीय न्यायाधीश श्री प्रताप मिह यादव, आर० एच० ज०० एम० केग न० सी० आई० टी० 64/87

#### मध्य

प्रतीकैन्ट, पत्थर ज्ञान लेवर यूनियन, रुम्पाड़, बुर्दी ।

—यूनियन

#### पक्ष

श्री विमल कुमार माइन ऑनर, बाटम लेवर, लाखीरी, बुर्दी ।

—नियोजक

#### उपस्थिति १

यूनियन की ओर से कोई उपस्थित नहीं ।  
नियोजक की ओर से: श्री विमल कुमार  
दिनांक अध्याद्य १०-१२-८९

#### प्रबाहुं

केन्द्र सरकार के श्रम मवायत के लेन्ड अधिकारी श्री बी० क० शर्मा ने उनकी अधिसूचना सं० एन-29012/21/87—१०-३ (बी) दिनांक 25-8-87 के द्वाग श्रीसंगिक विवाद अधिनियम, 1947, (जिसे आये अधिनियम का श्री जायेगा,) की धारा-10(1)(प्र) मप्टित उपधारा (२क) के अंतर्गत वास्ते अधिनियम इस न्यायाधिकरण को भेजा हो—

“क्या विमल कुमार, माइन ऑनर, लाखीरी, बुर्दी (गाजस्थान) के प्रबन्धाल भी अधिसूचना कर्मकार (मूली) भूमिका कलानी वाली भी भेजाये 25-2-1987 मे समाप्त करने तो कार्यवाही बैद्य और न्यायोजित है ? यदि नहीं तो कर्मकार किस अनुत्तोप वी द्वारा है ।”

2. बाब प्राप्त लेदेशन इस न्यायाधिकरण में पंजीकृत किया गया। उभय पक्षकारान को नोटिस पंजीकृत डाक द्वारा दिये गये। अध्यक्ष पत्थर खान लेवर यूनियन इन्डस्ट्रीज किला बूथी द्वारा विनांक 26-9-88 को नोटिस प्राप्त हो गया और बाबजूद नोटिस प्राप्ति की आज तक स्टेटमेंट आफ कलेम प्रस्तुत नहीं किया। आज भी प्रार्थी यूनियन की ओर से कोई उपस्थित नहीं आया। प्रार्थी नियोजक श्री विमल कुमार उस समय के खान मालिक न्यून्यत उपस्थित आये हैं जिन्होंने लिखित में किया कि श्रीमती कल्याणी बाई उमकी खान पर से स्वयं काम छोड़ कर चली गई थी परन्तु यह 1-10-87 को वापिस आकर काम करने लग गई थी। उसको उन्होंने 7-11-87 को पूरा पेमेंट कर दिया था और उसके बाब उन्होंने खान दूसरे को संभाला थी थी प्रतः आप कोई विवाद शेष नहीं है।

3. बाबजूद नोटिस प्राप्ति के पत्थर खान लेवर यूनियन इन्डस्ट्रीज की ओर से कोई उपस्थित नहीं आया जिससे विवित है कि प्रार्थी यूनियन इस विवाद को चलाने में कोई रुचि नहीं रखती है और इस प्रकार आठ पेमिया देने के पश्चात यूनियन की ओर से कोई उपस्थित नहीं आया है। इसमें यही अनुमान निकाला जा सकता है कि प्रार्थी यूनियन और खान मालिक विमल कुमार के बीच कोई विवाद शेष नहीं रह गया है प्रतः इस ईफैस के सदर्भ में कोई विवाद नहीं का अवार्द्ध पारित किया जाता है, जिसे प्रकाशनार्थ केन्द्र सरकार को अंतर्गत धारा 17 (1) अधिनियम 1947 के भेजा जाये।

प्रताप सिंह यादव, न्यायाधीश

[सं. एल-29012/21/87—भी. III (बी)]

का० आ० 1323.—प्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुभरण में, केन्द्रीय सरकार दरीबा अंगप्र प्रोजेक्ट, पो० श्री० दरीबा, जिला अलवर के प्रबंधतान्त्र में संबंध नियोजकों और उनके कर्मकारों के बीच, अनुवंश में निविष्ट श्रौद्योगिक विवाद में श्रौद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Dariba Copper Project, P. O. Dariba Distt. Alwar and their workmen, which was received by the Central Government on the 16-5-1989.

#### ANNEXURE

केन्द्रीय श्रौद्योगिक न्यायाधिकरण, जयपुर।

केन्द्रीय सरकार द्वारा मंत्रालय की अधिसूचना

सं. एल (2)/86

विनांक 7-8-87

जनरल सैकेटी, कापर मजदूर यूनियन, पो० श्री० दरीबा, अलवर।

—यूनियन

वनाम

प्रोजेक्ट मैनेजर, दरीबा कापर प्रोजेक्ट, दरीबा  
—नियोजक

उपस्थिति

भाननोय न्यायाधीश श्री प्रताप सिंह यादव, आर० एच० जे० एस०

यूनियन की ओर से : श्री रामसिंह

नियोजक की ओर से : श्री मनोज शर्मा

दिनांक अवार्ड : 1-10-88

अवार्ड

केन्द्र सरकार निम्न विवाद इस न्यायाधिकरण की वास्ते अधिनियम हेतु अपनी अधिसूचना सं० L(2)/86 Cons. II/D-III(B)/DIV(A) विनांक 7-8-87 के द्वारा श्रौद्योगिक विवाद अधिनियम, 1947 की धारा 10 (1) द्वी पंच धारा 10 की उपधारा 2 (ए) के अंतर्गत प्रेषित किया है :

“Whether the action of the management of Dariba Copper project P.O. Dariba Distt. Alwar in not promoting Shri Ram Sher as Electrician 'C' in the vacant post in violation of Memorandum of Settlement dt. 27-3-1980 clause 4.2 of annexure-VII is justified, proper and legal? If not, to what relief the workman is entitled?”

2. यह दिनेशन इस न्यायाधिकरण में विनांक 31-8-87 को प्राप्त हुआ, जिसे पंजीकृत किया गया। उभय पक्षकारान को नोटिस पंजीकृत डाक से जारी किये गये। यूनियन पक्ष की ओर से विनांक 21-10-87 को भी एम० एफ० बैग अधिकृत प्रतिनिधि उपस्थित आये जिन्होंने स्टेटमेंट आफ कलेम प्रस्तुत करने के लिए समय चाहा। ततश्चात् दिनांक 15-12-87, 18-1-88, 15-3-88, 23-4-88, 11-5-88, 7-7-88 एवं 18-8-88 को स्टेटमेंट आफ कलेम पेश करने के लिए अवगत था है जो प्रदान किये गये। विनांक 15-12-87 को प्रार्थी नियोजक की ओर से श्री मनोज शर्मा व उनके साथ श्री शिवदिल अधिकरण उपस्थित आये। जिन्होंने अपना वकालतनाम प्रस्तुत किया और आज तक वे विधायी की ओर से उपस्थित आये रहे हैं। इस प्रकार 8 अवमर दिये जाने के पश्चात भी यूनियन की ओर से स्टेटमेंट आफ कलेम प्रस्तुत नहीं किया गया है जिससे भी यह विवित है कि प्रार्थी यूनियन को इस विवाद को चलाने में कोई रुचि नहीं है या कोई विवाद शेष नहीं रह गया है। इस प्रकार प्रत्येक अवमर दिये जाने के बाद भी कोई कलेम पेश नहीं किया गया है इसलिए भीजूता विवाद में “नो डिस्पूट अवार्ड” पारित किया जाता है। इसकी सूचना केन्द्रीय सरकार को वास्ते प्रकाशनार्थ अवार्ड अंतर्गत 17 (1) श्रौद्योगिक विवाद अधिनियम 1947 मेंजी जावे।

प्रताप सिंह यादव, न्यायाधीश

[सं. एल—7(2) 86-कन्न० II/झी. III (बी)]

वी के० शर्मा, ईस्क अधिकारी

नई दिल्ली, 16, मई, 1989

का० आ० 1324.—श्रौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुभरण में, केन्द्रीय सरकार मैसर्स भारत कोकिं कोल लिं. की अंगारपाथरा कोलियरी के प्रबंधतान्त्र में संबंध नियोजकों और उनके कर्मकारों के बीच, अनुवंश में निविष्ट श्रौद्योगिक विवाद में केन्द्रीय सरकार श्रौद्योगिक अधिकरण (सं. 1) धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-5-89 को प्राप्त हुआ था।

New Delhi, the 16th May, 1989

S.O. 1324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. I, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Angar Pathra Colliery of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on the 4-5-1989.

## ANNEXURE

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 81 of 1988

## PARTIES :

Employers in relation to the Management of Angarpathera Colliery of M/s. B. C. C. Ltd., Dhanbad.

AND

Their Workman.

## APPEARANCES :

For the Employers : Sri P. Jha, Dy. Personnel Manager, Katras Area.

For the Workman : Sri Karu Ram, General Secretary, Dalit Mazdoor Sangh.

STATE : Bihar

INDUSTRY : Coal

Dated, the 28th April, 1989

## AWARD

The present reference arises out of Order No. L-20012/78/88-D-3(A) dated 18-7-88, passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows :—

"Whether the demand of Dalit Mazdoor Sangh, Dhanbad that dependent of Late Karu Bhuiyani, Casual Wage Loader of Angarpathera Colliery of M/s. Bharat Coking Coal Limited, Dhanbad be offered employment under Clauses 10.4.2 of NCWA II is justified ? If, yes, to what relief is the workman entitled ?"

2. The dispute has been settled out of Court. A memorandum of settlement has been filed in Court. I have gone through the terms of settlement and I find them quite fair and reasonable. There is no reason why an award should not be made on the basis of terms and conditions laid down in the memorandum of settlement. I accept it and make an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of this award be sent to the Ministry as required under section 15 of the Industrial disputes Act, 1947.

S. K. MITRA, Presiding Officer  
[No. L-20012/78/88-D. III(A)/IR (Coal-II)]

## BEFORE THE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I AT DHANBAD

Reference No. L-20012/78/88-D-3A

Employers in relation to the management of Angarpathera Colliery of M/s. B. C. C. Ltd

AND

Their workman.

The humble petition on behalf of the parties to the above reference most respectfully shewth :—

1. That, without prejudice to the respective contentions of the parties, the dispute has been amicably settled between the parties on the following terms :—

## Terms of Settlement

- That, Sri Ram Kishun Bhua, the dependent son of the deceased workman named Kari Bhuni, a casual wagon loader will be given employment as "Temporary" Miner/Loader (as a special case) after he reports for his duties alongwith the certificates and documents mentioned hereinafter within 30 days from the date of this settlement.
- That, the said dependent son should be below 35 years of age and should be medically examined by the Area Medical Board and if found fit to work as "Temporary" Miner/Loader, he shall be provided employment as "Temporary" Miner/Loader.
- That, the said dependent son will submit the certificate from the Mukhia/BDO of the local Area within whose jurisdiction his village is situated together with an affidavit indicating that he is the real dependent son of late Kari Bhuni on whose behalf the union has raised the dispute.
- That, he will submit a certificate from the Secretary of the Union raising the present dispute certifying that he is the dependent son of Late Kari Bhuni on whose behalf the present dispute has been raised.
- That, in case it will be found that the said person made false declaration on the certificate regarding his identity the services of the said person will stand automatically terminated and criminal case will be instituted against the said person.

2. That, in view of the settlement, there remains nothing to be adjudicated.

It is, therefore, humbly prayed that the Hon'ble Tribunal will graciously pleased to pass the Award in terms of settlement.

For the Worker.

Sd./-

(Karu Ram)  
General Secretary,  
Dalit Mazdoor Sangh.

L.T.I.

(Ram Kishun Bhua)  
Witness  
Sd./-

Secretary, Dalit Mazdoor Sangh.

For the Employer  
(P. Jha)  
Dy. Personnel Manager  
Katras Area.

नई दिल्ली, 17 मई, 1989

का० शा० 1325.—श्रीसौमित्र विद्याद अधिकारी, 1947 (1947 का 14) की वारा 17 के अनुसार में, नेत्रीय मरकार, मेंगसू भारत कोकिं कोल मिट्टेल की मुद्रीकारी कोनिकरी के प्रबंधनमें से संबद्ध नियोजकों द्वारा उनके कम्पनीरों के लोच, अनुश्रूति में निर्दिष्ट ग्रौटोगिक विद्याद में केन्द्रीय मरकार ग्रौटोगिक अधिकारण (मं० 2), नवाब के पंजाब को प्रकाशित करनी है, जो केन्द्रीय मरकार द्वा० 9-5-1989 को प्राप्त हुआ था।

New Delhi, the 17th May, 1989

S.O. 1325.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Mudidih Colliery of M/s. Bharat Coking Coal Limited and their workmen, which was received by the Central Government on the 9-5-1989.

## ANNEXURE

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Reference No. 28 of 1986

In the matter of an industrial dispute under section 10(1)(d) of the I. D. Act., 1947.

## PARTIES :

Employers in relation to the management of Mudidih Colliery of M/s. BCCL and their workmen.

## APPEARANCES :

On behalf of the workmen—Shri J. P. Singh, Advocate.

On behalf of the employers—Shri B. Joshi, Advocate.  
STATE : Bihar INDUSTRY : Coal

Dated. Dhanbad, the 1st May, 1989

## AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012(80)/85-D. IV(B), dated, the 27th December, 1985.

## SCHEDULE

"Whether the demand of the Union for employment of Smt. Parbatia Bhuiini and 40 others delisted casual wagon loaders (as per annexure) of Mudidih Colliery of M/s. BCCL is justified ? If so, to what relief the workmen are entitled ?"

The case of the workmen is that the 41 concerned workmen were working in Mudidih Colliery of M/s. BCCL as casual wagon loaders since the time of the erstwhile management. All of a sudden the names of the concerned workmen were struck off from the rolls of the colliery without assigning any reason to them. The management vide letter dated 27/28-8-84 admitted that the names of the concerned workmen were struck off from the rolls of the colliery. Shri B. N. Jha, Personnel Manager of BCCL vide the said letter also requested the union to submit the list of the concerned workmen in order to process and expedite the settlement of their case and a list of the concerned workmen was complied with by the union. The management had informed the union earlier during the discussion held on 20-7-84 that as per policy decision of the company it was not possible to provide employment to the female wagon loaders and that the case of male casual wagon loader would be examined as per guideline and if the case of the concerned workmen fitted into the guideline, his case would be expedited on its merit. The said matter was taken up by the union several times in mutual discussion between the union and the management but with no result. Thereafter the union raised an industrial dispute regarding the concerned workmen before the ALC(C), Dhanbad who took up the matter in conciliation. The conciliation ended in failure and thereafter the present industrial dispute was referred to this Tribunal for adjudication. The management deliberately delayed in the decision of the case of the concerned workmen. The action of the management in not providing employment to the concerned workmen is illegal, arbitrary and unjustified. On the above facts the union prayed on behalf of the concerned workmen that the concerned workmen are entitled to employment and other benefits from the date their names were struck off from the rolls of the colliery.

The case of the management is that the union is making attempt to induct strangers into the employment of the management taking undue advantage of industrial litigation and the union's privileged position. The concerned workmen were never employed as casual wagon loaders and as such there was no question of their delisting them at any time.

There was no relationship of employer and employee between the management and the concerned workmen. Even if it is assumed that the concerned workmen had worked as casual wagon loader on some occasion and were delisted, they have no right to claim for employment under the management. Prior to the nationalisation of Coal Mines, 1973 there used to be lot of difficulties in loading of wagons on the days when more than average number of wagons used to be supplied and casual wagon loaders used to be employed on those days. After amalgamation of small colliery into bigger units and with improved position of regular wagon supply it became possible to make more casual wagon loaders permanent and those casual wagon loaders completing 240 days attendance in a calendar year were made permanent. With the introduction of mechanical loading by pay loaders the scope for employment of casual wagon loaders has been considerably reduced and presently there is no scope for employing the concerned workmen as casual wagon loaders in the colliery. With intent to give some relief to the delisted and unlisted casual wagon loader who had put minimum of 75 days attendance in any calendar year, a circular dated 4-8-80 was issued to enrol them as badli miners/loaders for employment in the mine in place of permanent miners/loaders during leave and sick vacancies. The matter was settled in 1980 and 1981 and only male members out of the delisted and unlisted casual wagon loaders having put in 75 days of attendance in any calendar year, as per the above circular and who offered for the job as badli miners/loaders were kept on the badli list. The concerned workmen never offered for the jobs of badli miners/loaders in 1980 or 1981 and their case were not considered. It is further stated by the management that it has invited applications through Employment Exchange for recruitment of some miners/loaders and male members amongst the concerned workmen may apply for the same and their case may be favourably considered provided they will be found suitable for the same by the selection committee. So far as female workers are concerned they have no scope for employment in underground mines because of prohibition under the Mines Act 1952. On the above facts it is submitted on behalf of the management that the concerned workmen are not entitled to any relief.

The points for decision in the case are :—

- (1) Whether the demand of the union for employment of the concerned 41 delisted wagon loaders is justified ?
- (2) Whether the concerned workmen had completed attendance of more than 75 days in a year prior to the stoppage of their work ?

The workmen have examined four witnesses. The management did not examine any witness. The documents of the workmen are marked Ext. W-1 to W-6.

## Point No. 1 &amp; 2

It will appear on perusal of annexure A to the schedule of order of reference (English version) that the male concerned workmen of Bhuria caste have all been described as Bhuiini except Sl. No. 1 Parbatia Bhuiini who is a female concerned workman. The Hindi Version of schedule to the order of reference is clear and does not describe the Bhuria concerned workmen as Bhuiini. Moreover, even in the English version of Annexure-A the concerned workmen describe as Bhuiini are stated as "Mr". It is clear therefore that the description of some of the concerned workmen as Bhuiini is incorrect and the correct names of the concerned workmen have been stated in the Hindi Version of the schedule of the order of reference.

Point No. 1 and 2 are inter connected and as such they will be discussed together for the sake of convenience.

The workmen have examined WW-1 Suresh Bhuria and WW-4 Bijoy Rabidas who are 2 of the concerned workmen. WW-3 Shri Karu Ram is the General Secretary of Dalit Mazdoor Sangh who had sponsored the present industrial dispute. WW-2 Dinesh Singh had also worked as casual wagon loader in 1973-74 in Mudidih colliery and he was also stopped work along with the concerned workmen and he was subsequently given employment as badli miner in 1976.

WW-1 and WW-4 have stated that they were working in Mudidih colliery as wagon loader. WW-1 has stated that he was working as wagon loader in Mudidih Colliery since 3 years prior to the nationalisation of the colliery and that the management stopped work of the 41 concerned workmen who are working as wagon loaders. He was unable to say as to when BCCI had taken over Mudidih colliery. Admittedly he has no paper with him, such as, Bonus card, Wage slip etc. to show that he was working in Mudidih colliery. He also does not remember the name of the officer under whom he had worked. WW-4 Bijoy Rabidas has stated that he was working in Mudidih colliery since 1969 and that he said colliery was nationalised in 1971. He has stated that he worked on Mudidih colliery as wages loader till 1973 and that in December, 1973 his work was stopped along with the work of the other concerned workmen. He has stated that they were getting bonus and that he possesses the bonus card with him but he has not produced the bonus card. He has further stated that he has no other paper with him to show that he was working as a wagon loader in Mudidih colliery. WW-3 Shri Karu Ram had never worked in Mudidih colliery. He has accepted that he has no paper with him to show since when the concerned workmen were working as wagon loader. He has stated that the delisted casual wagon loader who had completed 75 days of attendance during the period from 1973 to 1975 were given employment as badli miner/loader. He has stated that in 1981 the concerned workmen had applied to the management for giving them employment as badli miner/loader on the basis of circular of 1980. Thus WW-3 is not a competent witness to say as to whether the concerned workmen were working as casual wagon loader in Mudidih colliery and he also could not say about their attendance. WW-2 has stated that he was delisted casual. He had not received any identity card as none of the delisted casuals had been given identity card. He used to get the amount of bonus after signing a register and he used to get the wages through voucher. He has also stated that all the persons who had applied along with him for employment after their stoppage of work were given work as badli miner/loader. He has further stated that about 40 to 50 persons had applied and appeared before the management at that time and out of them about 10 persons were given the job of badli miner/loader along with him. Thus there is no documentary evidence produced on behalf of the workmen to show that they had worked as casual wagon loader or as to what was their attendance in the years they had worked. However, it is clear from the evidence of WW-2 that the bonus used to be paid after obtaining the signature of the casual wagon loader in a register and that their wages was paid through vouchers and also that they had not received any identity card. Thus all papers concerning the casual wagon loaders were in the custody of the management and it was not possible for the workmen to produce those registers themselves. However, by their petition dated 16-7-87 the copy of which was received by Shri B. Joshi representing the management, the workmen had called for certain documents from the management. The documents called for by the said petition by the workmen was the original wage register of permanent and casual wagon loaders from 1970 to 1984, original quarterly bonus payment register of permanent and casual wagon loaders from 1970 to 1984, list of permanent wagon loaders from 1970 to 1984, number of permanent casual wagon loaders who loaded wagons from 1970 to 1984 and some other documents but the management did not file any of those documents nor any explanation was submitted on behalf of the management as to why those documents were not being produced before the Tribunal as called for by the workmen. It is apparent therefore that the management is suppressing the documents and they could have atleast produced those documents in connection with the casual wagon loaders so that we could come to a conclusion as to whether the concerned workmen had ever worked as casual wagon loader in Mudidih Colliery and also to show the days of attendance of their work in Mudidih colliery. In view of any explanation an adverse inference had to be taken against the management and it appears that the management is not producing those documents as that would reveal the names of atleast some of the concerned workmen who had worked as casual wagon loader in Mudidih Colliery prior to 1974.

The workmen had filed a list of the concerned workmen along with the attendance for the year 1973 before the ALC(C) Dhanbad. The list of workmen Ext. W-6 which was filed by WW-3 to the ALC(C) raising the industrial

dispute shows that 22 of the concerned workmen had attendance of 75 days or more in the year 1973 and they are Sl. No. 2, 5, 10, 13, 14, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 38, 40, and 41 of the annexure to the schedule of the order of reference. Thus according to the said list itself it will appear that only the concerned workmen whose Sl. No. has been stated above had worked for 75 days or more as wagon loader in Mudidih colliery in 1973 and the rest of the 19 concerned workmen had got attendance of less than 75 days and as such those 19 concerned workmen have absolutely no case so that it may be considered whether they can get advantage of the circular of 1980.

During the course of hearing of the case and from the evidence adduced on behalf of the workmen it will appear that the concerned workmen have based their claim for employment on the basis of the circular of 1980. The circular of 1980, as admitted by WW-3, shows that the delisted casual wagon loader who had completed 75 days of attendance during the period from 1973 to 1975 were given employment as badli miner/loader. WW-3 further stated that in 1981 the concerned workmen had applied to the management for giving them employment as badli miner/loader on the basis of circular of 1980. It is clear therefore that the basis of the entire case is the circular of 1980 by which the delisted casual wagon loader who had completed 75 days of attendance during the year 1973 could be enrolled as badli miner/loader for giving employment. The management in para 6 of the W.S. have stated that it intended to give some relief to the delisted and unlisted casual wagon loader who had put minimum 75 days of attendance in any calendar year. A circular dated 4-8-80 was issued to enroll them as badliminer/loader for employment in the mine to work in place of permanent miner/loaders during their leave and sick vacancies and that only those out of delisted and unlisted casual wagon loaders having put in 75 days of attendance in any calendar year who offered for the job for badli miner/loader were kept in the badli list. Thus the fact that the delisted casual wagon loader who had completed 75 days of attendance or more were enrolled as badli miner/loader for employment in accordance with the circular of the management dated 4-8-80. The list Ext. W-6 which was filed by the workmen before the ALC(C) has given the attendance of the concerned workmen and as already discussed above it will appear that the 22 of the concerned workmen had completed attendance of 75 days or more in the year 1973 and as such according to the said circular of 1980 those 22 concerned workmen deserve to be enrolled as badli miner/loader for employment in the mine. The management has not produced any document to controvert the fact that the attendance of the 22 concerned workmen or other concerned workmen as shown in Ext. W-6 is not correct. The management who had in their possession the documents relating to the attendance, payment of wages register and payment of bonus Register etc. could have been filed by the management to show that the names of the concerned workmen and their attendance in Ext. W-6 was not correct. It was imperative on the part of the management to file the documents which were in their possession when it was called for by the workmen. The workmen were unable to file those documents as they were not in their possession. I would therefore hold that the 22 concerned workmen whose Sl. No. I have stated above were working as casual wagon loaders in Mudidih colliery in 1973 and that they had attendance of 75 days or above and as such their case is covered by the circular of the management dated 4-8-80 and they are entitled to be enrolled as badli miner/loader for employment in the mine. I further hold that the demand of the 22 concerned workmen for employment after being enrolled as badli miner/loader is justified. Thus these two points are accordingly decided.

In the result, I hold that the demand of the union for employment of 22 concerned workmen named in Sl. No. 2, 5, 10, 13, 14, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 38, 40 and 41 of the schedule to the order of reference for being enrolled as badli miner/loader is justified and consequently the management is directed to enroll the above 22 concerned workmen as badli miner/loader for employment in the mine as per circular dated 4-8-80 within one month from the date of publication of the Award in the Gazette of India. As the 22 concerned workmen have only

proved the right of their being enrolled as badli miner/loader for employment in the mine in place of permanent miner/loaders going on leave the above 22 concerned workmen will not be entitled to any back wages.

This is my Award.

I. N. SINHA, Presiding Officer  
[No. L-24012/80/85-D. IV (B)/IR (Coal-I)]

#### ANNEXURE A

Sl. No. Name of the workman.

1. Smt. Parbatiya Bhuiya
2. Mr. Yogeshwar Singh.
3. Mr. Sitaram Bhuiya
4. Mr. Dashrath Bhuiya
5. Mr. Jamuna Bhuiya
6. Mr. Loktan Rajwar
7. Mr. Tawarikh Ansari
8. Mr. Budhan Bhuiya
9. Mr. Rajesh Singh
10. Mr. Ramesh Bhuiya
11. Mr. Shankar Bhuiya
12. Mr. Rajendra Bhuiya
13. Mr. Sajdev Bhuiya
14. Mr. Ram Nath Singh
15. Mr. Ugan Turi
16. Mr. Motilal Bhuiya
17. Mr. Bhuneswar Bhuiya
18. Mr. Kara Bhuiya
19. Mr. Rajesh Mahto
20. Mr. Baldev Bhuiya
21. Mr. Sirajuddin Ansari
22. Mr. Arjun Bhuiya
23. Mr. Bhuneswar Bhuiya
24. Mr. Saudagar Bhuiya
25. Mr. Akhtar Hussain
26. Mr. Keshav Bhuiya
27. Mr. Suresh Bhuiya
28. Mr. Muhammed Aizij
29. Mr. Kartik Bhuiya
30. Mr. Parmeshwar Saw
31. Mr. Lakhon Chowdhury
32. Mr. Hemlal Bhuiya
33. Mr. Moh. Naim Haq
34. Mr. Balkishan Nausiya
35. Mr. Moh. Pag. Zahmed
36. Mr. Charogi Munshi
37. Mr. Umesh Sharma
38. Mr. Vijay Ravidas
39. Mr. Jethu Bhuiya
40. Mr. Vineshwar Bhuiya
41. Mr. Jawahar Bhuiya

I. N. SINHA, Presiding Officer

मई विलासी, 24 मई, 1989

क्रा० आ० 1326.—श्रीयोगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, भौतीय मरकार, मैसमं भारत कोकिंग कॉल लिमिटेड की लोयाबाद कोकिंगरी के प्रबंधनकार्य में संबंध नियोजकों और उसके कर्मकारों के लिए, अनुबंध में निर्दिष्ट श्रीयोगिक विवाद में केन्द्रीय सरकार श्रीयोगिक प्रधिकरण, (मं० 1), भनवाद के प्रकार को प्रकाशित करती है, जो केन्द्रीय मरकार को 17-5-1989 को प्राप्त हुआ, था।

New Delhi, the 24th May, 1989

S.O. 1326.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Management of Loyaband Colliery of M/s Bharat Coking Coal Ltd., and their workmen, which was received by the Central Government on the 17-5-1989.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 56 of 1984

#### PARTIES :

Employers in relation to the management of Loyaband Colliery of M/s. Bharat Coking Coal Ltd.

AND

Their Workmen.

#### APPEARANCES :

For the Employers : Shri G. Prasad, Advocate.

For the Workmen : Shri S. Bose, Secretary, Rashtriya Colliery Mazdoor Sangh.

STATE : Bihar.

INDUSTRY : Coal

Dated, the 10th May, 1989

#### AWARD

By Order No. L-20012(114)/84-D. III (A) dated the 18th August 1984, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication :

“Whether the management of M/s. Bharat Coking Coal Ltd., Loyaband Colliery is justified in not giving promotion to Shri T. D. Ghose in Technical Grade 'A' (Supervisor) with effect from the date from which his juniors Shri N. C. Banerjee and U. N. Singh were promoted in Technical Grade 'A' in 1980 ? If not, to what relief the workman concerned is entitled and from what date ?”

2. The case of the management of M/s. Bharat Coking Coal Ltd., Loyaband Colliery, as appearing from the written statement submitted by the General Manager, Sijua Area No. V on behalf of the employer, details apart, is as follows.

The present reference is not legally maintainable either in law or on facts. Retrospective effect can be given to an award prior to the date on which specific demand which resulted in industrial dispute was made. In the present case the demand was made by the sponsoring union, namely, Rashtriya Colliery Mazdoor Sangh, the union of the workmen on 3-8-83 through A.L.C.(C), Dhanbad and so no retrospective effect can be given to the award for any period prior to that date.

Promotion is a function of the management and it can not be claimed as a matter of right. The question whether a particular employee should be promoted from one grade to higher grade depends not only on the length of service but also on his efficiency and other qualification, schemes/rules framed for promotion by the employer for the post to which he seeks to be promoted. In the absence of clear proof of malafides or victimisation or unfair labour practice on extantaneous grounds on the part of the management it is wholly inappropriate for any outside authority to attempt to weight relevant merits of the individual who might be holding higher post and those who are aspiring for the same.

Moreover, determination of the size of the working force is the exclusive right of the employer and no post can be created to accommodate an employee.

M/s. Bharat Coking Coal Ltd. has a well laid down cadre scheme for promotion of workmen working in different discipline like workmen working in non-finance disciplines, workmen working in finance stores discipline, workmen working in technical discipline and such others. Promotion is made in accordance with the policy/schemes applicable to each discipline as the nature of job performed by workmen of different disciplines differ and there exists separate seniority list for each discipline. T. D. Ghose, the concerned workman, belongs to Clerical Grade of non-finance discipline, whereas S/Shri N. C. Banerjee and U. N. Singh belong to finance/stores discipline and, therefore, no comparison can be made between a personnel belonging to clerical (non-finance) discipline and a personnel belonging to finance/stores discipline. N. C. Banerjee has been working as an Office Supdt. at Sijus Area and U. N. Singh has been working as Sr. Purchase Assistant in the Area Office, while T. D. Ghose, concerned workman, has been working as a Head Time Keeper in Loyabadi Colliery. The duties performed by S/Shri Banerjee and Singh are different from those performed by the concerned workman. In the clerical grade there are as many as 24 persons who are senior to the concerned workman and their cases can not be ignored to suit the convenience or to meet the demand of the concerned workman. The seniority list of all the special grade clerks working in non-finance discipline in M/s. B.C.C.L. was published long ago by letter dated 27/30-7-1979 and copies thereof were served on all the persons named therein. The concerned workman was well aware that he was in non-finance discipline and he ranked 24th in the order of seniority but in spite of this neither he nor his union raised any dispute. It is too late now for him to raise a dispute that since persons from finance/stores disciplines have been promoted, he should be promoted or that his claim for promotion in technical Grade 'A' (Supervisory) with effect from the date S/Shri N.C. Banerjee and U. N. Singh were promoted is not tenable either in law or on facts. It is submitted that there is no merit in the case of the concerned workman and so the instant reference be answered accordingly.

3. Neither the concerned nor the sponsoring union, namely, Rashtriya Colliery Mazdoor Sangh, submitted any written statement in support of the demand although ample opportunity was given. However, from the tenor of the reference it appears that the demand of the concerned workman and his union is for promotion of the concerned workman in Technical Grade 'A' (Supervisory) with effect from the date his juniors S/Shri N. C. Banerjee and U. N. Singh were promoted in Technical Grade 'A' in 1980. According to the union and the concerned workman the action of the management is not justified in not promoting him to Technical Grade 'A' (Supervisory) in the context of the fact that his juniors S/Shri N. C. Banerjee and U. N. Singh were promoted in Technical Grade 'A' in 1980.

4. The parties arrayed have neither adduced any oral or documentary evidence.

5. Shri G. Prasad, learned Advocate for the management has contended that the schedule to the terms of reference is indicative of the fact that the question of promotion of the concerned workman should be considered by this Tribunal from 1980. According to him such specification in the schedule gives rise to the question as to whether an award can be given effect to retrospectively prior to the date on which specified demand was made. He has submitted that in the present case specific demand was made by the sponsoring union on 3-8-83 and so the Tribunal can at best give effect to its award with effect from 3-8-1983 and not to any date prior thereto, since in his view no retrospective effect can be given to an award for any period prior to the date on which specific demand was made.

Industrial adjudication has generally treated the date of demand and the date of award as two extreme points for fixing the date on which the award should come into operation. However, adjudicator has discretion to fix any intermediate date depending upon the circumstances of the case. But no

general rule can be laid down as to the date on which an award should be made effective. The date of operation of an award is generally fixed by the Tribunal on the consideration of the totality of the facts and circumstances of the case.

6. Shri Prasad has further contended that promotion is a function of the management and it is wholly inappropriate for any outside authority to impose upon the decision on the management in the matter. Indeed, the promotion is a function of the management, but nevertheless the Tribunal has got every jurisdiction to probe into the matter when there is allegation of malafides or blatant discrimination or unfair labour practice resorted to by the management. In the present case, however, there is no vestige of material on record to indicate that the management's action is malafide or that it has resorted to blatant discrimination or unfair labour practice in the matter of promotion of the concerned workmen.

7. The case of the management is that it has got specific scheme for promotion for workmen working in different disciplines, viz., workmen working in non-finance discipline, workmen working in finance/stores discipline and workmen working in technical discipline and so on and that promotion is made in accordance with the policy/scheme applicable to each discipline as the nature of job performed by these workmen differ and there exists separate seniority list for each discipline. No controversy has been raised over these statements of facts.

8. According to the management, the concerned workman belongs to Clerical Grade of non-finance discipline whereas S/Shri N. C. Banerjee and U. N. Singh belong to finance/stores discipline and therefore, no comparison can be made between the concerned workmen on one side and S/Shri N.C. Banerjee and U.N. Singh on the other. These statement of facts have not been assailed either by the sponsoring union or the concerned workman.

9. It is the further case of the management that seniority list of all special grade clerks working in non-finance discipline in M/s. B.C.C.L. was published by letter dated 27/30-7-79 and copy thereof was served on all persons concerned including the concerned workman and that according to the seniority list rating the position of the concerned workman was 24. This statement of facts has not been assailed. Thus, it is seen that the action of the management in not promoting the concerned workman in Technical Grade-A (Supervisory) with effect from the date S/Shri N. C. Banerjee and U.N. Singh were promoted in Technical Grade-A 1980 is justified.

10. Shri S. Bose, Secretary of the sponsoring union has represented the concerned workman and the sponsoring union in this case. He has submitted that the concerned workman has reportedly retired from service and so the present reference has become infructuous by efflux of time.

11. Accordingly, the following award is rendered—the management of M/s. B.C.C. Ltd., Loyabadi Colliery is justified in not giving promotion to Shri T. D. Ghose in Technical Grade 'A' (Supervisor) with effect from the date from which S/Shri N. C. Banerjee and U. N. Singh were promoted in Technical Grade 'A' in 1980.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer,  
[No. I-20012/114/84-D.III(A)/IR(Coal-I)]  
K. J. DYVA PRASAD, Desk Officer

नई दिल्ली, 16 मई, 1989

का.० अ.० 1327.—मीडियनिक विवाद अधिनियम, 1947 (1947 का 11) द्वि धारा 17 के अनुरूप में, केन्द्रीय सरकार व बैंकर्स फॉनकर्फ्युन ट्रिमो वा सोहागपुर एरिया के प्रबंधताल के संबंध नियोजकों द्वारा उनके कम्पनीों के बीच, अनुबंध में तिफ्फिट मीडियनिक विवाद में केन्द्रीय सरकार श्रीमोर्गिक अधिकारी, जबलपुर के पंचाट को प्रकाशित न रखी है, जो केन्द्रीय सरकार का 5-5-89 को प्राप्त हुआ था।

New Delhi, the 16th May, 1989

S.O. 1327.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Sohagpur Area of M/s. W. C. Ltd. and their workmen, which was received by the Central Government on the 5-5-1989.

## ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, JABALPUR (M.P.)

CASE NO. CGIT/LC(R)(38)/1985.

## PARTIES :

Employers in relation to the management of Sohagpur Area of Western Coalfields Ltd., P.O. Dhanpuri, Distt. Shahdol (M.P.) and their workman Shri Mohd. Yusuf, Works Supervisor, Regional Workshop, Burhar, represented through the M.P. Koya Muzdoor Sabha, P.O. Dhanpuri, Distt. Shahdol (M.P.).

## APPEARANCES :

For Workman—Shri D. L. Agarwal.

For Management—Shri P. S. Nair, Advocate.

INDUSTRY : Coal Mining—DISTRICT : Shahdol (M.P.).

## AWARD

Dated the 25th April, 1989.

This is a reference made by the Central Government in the Ministry of Labour vide Notification No. L-22012 (152)/83-D.II(B)/DV, dated 18th May, 1983 for adjudication of the following dispute :—

“Whether the penalty of Rs. 17,600 and stoppage of two increments without cumulative effect imposed on the workman Shri Mohd. Yusuf, Works Supervisor Regional Workshop, Burhar by the management of Western Coalfields Limited, Sohagpur Area for not transporting Steel at the rate of Rs. 175 per Metric Tonnes from the M/s. Bombay M.P. Roadways, Nagpur is justified? If not, to what relief the workman concerned is entitled?”

2. It is common grounds that Shri Mohd. Yusuf (hereinafter referred to as the workman) was working as Works Supervisor, R.W.S. Burhar in the relevant year of 1980. He was issued a show cause notice dated 24-12-1981 by the Deputy Chief Mining Engineer (E&M) Sohagpur on the following imputation of charges :—

## Charges

“While you were on duty during the month of July 1980 the 190 tons of Steel was to be transported from Hindustan Steel Limited Stock Yard, Nagpur to Central Stores, WCL, Burhar and for this purpose, you were deputed in the month of July 1980 to go to Nagpur and to arrange for the transportation. Before going to Nagpur, a letter from M/s. Bombay MP Roadways dt. 9-7-1980 was received by GM, Sohagpur Area, wherein the firm quoted the rate of Rs. 175 per ton. This rate was brought to your notice and in token of having seen this, you signed in the reverse of the said letter of the firm. Thereafter, you visited Nagpur and obtained 4 quotations from the following firms as mentioned below :—

- (1) Bombay Raipur Roadways @ Rs. 268 per ton.
- (2) New Haryana Transport Co. @ Rs. 275 per ton.
- (3) M.P. Roadways @ Rs. 275 per ton.
- (4) Dalbir Roadways @ Rs. 300 per ton.

You were not authorised to call for above quotations when the specific letter from Bombay MP Roadways dated 9-7-80 was given to you wherein the firm quoted the rate of Rs. 175 per ton, but you have obtained above 4 quotations whose rate is very high and you placed the order to M/s. Bombay Raipur Roadways @ Rs. 268 per ton which is much higher than the rate of M/s. Bombay MP Roadways. Accordingly 190 MT of Steel was transported from Nagpur to Burhar on 14-8-80 in 10 Trucks.

Thereafter a letter was received from Bombay MP Transport on 24-8-80 to GM, Sohagpur wherein they stated that your representative (Shri Mohd. Yusuf) who was deputed for the job of Nagpur, did not visit there again. They (Bombay MP Roadways) have also mentioned that they offered the transportation @ Rs. 175 per ton.

Thus, you manipulated to obtain inflated rate of transportation from Transporters, Bombay Raipur Roadways and thus, you caused the loss to WCL appx. to the extent of Rs. 17,670 for which, you are wholly and solely responsible.

If the above charges are proved, they would constitute misconduct within the meaning of Company's certified Standing Orders under Clause 17(i)(a) which reads as :—

“Theft, fraud or dishonesty in connection with Company's business or property.”

The workman replied to the show cause notice vide Annexure B on 28-12-1981.

3. The matter was, however, handed over to the Chief Vigilance Officer who conducted the enquiry into the matter and submitted his confidential report. Workman was charge-sheeted as above and one Shri M. S. Chandrashekher, Senior Personnel Officer, Burhar Group, was appointed Enquiry Officer vide order dated 22/23-1-1982 and the Chief Vigilance Officer, Jabalpur was appointed as Presenting Officer. The Enquiry Officer conducted the enquiry and submitted his report, it appears first to the Chief of Vigilance Coal Estate Officer who vide letter dated 31-12-82 observed as under :—

“After examining the Enquiry Report and Enquiry proceedings, it has been decided to impose the following penalty on Shri Mohd. Yusuf, Sr. Works Supervisor, RWS, Burhar :—

- (a) Recovery of monetary loss incurred by WCL to the tune of Rs. 17670 from Shri Yusuf.
- (b) Stoppage of 2 increments without cumulative effect.
- (c) Transfer of Shri Yusuf from the present place of posting to an insensitive post.

He has, therefore, requested the General Manager, Sohagpur Area to initiate further necessary action to impose the above mentioned penalties with intimation to him. Thereafter someone for Supdt. Engineer (E&M) Regional Workshop Burhar passed the following order imposing the penalties proposed by the Chief Vigilance Officer :—

- 1. Recovery of monetary loss incurred by WCL to the tune of Rs. 17670 from you.
- 2. Stoppage of 2 increments without cumulative effect.”

4. Aggrieved by this punishment workman moved in conciliation and after failure of conciliation this matter was referred to this Tribunal for adjudication.

5. This Tribunal vide its order dated 18th November, 1986 decided the preliminary Issue No. 1 and held that the domestic enquiry was not legal and proper, as such gave the parties an opportunity to prove misconduct before this Tribunal. Parties therefore adduced evidence before this Tribunal.

6. The workman challenged the findings of Enquiry Officer as well as the Disciplinary Authority on legal grounds as

well as on facts. Workman inter alia also challenged the punishment order on the following grounds:—

- That the order communicated to the applicant on behalf of the Superintendent Engineer (E&M) of Regional Workshop appears that he has passed the order as advised by the Chief Vigilance Officer without applying his mind to the findings of Enquiry Officer or to the punishment itself.
- The order of punishment is not signed by the competent authority as per Standing Orders of the Colliery.
- The Deputy Chief Engineer (E&M) which issued the charge-sheet and Supdg. Engineer who is purported to have issued the punishment order have no locus standi in the disciplinary matters as per the Certified Standing Orders of the Colliery as they did not come within the purview of Manager, Owner or Agent. Thus the charge-sheet and punishment order are both incompetent and without jurisdiction.

1. The case of the management further is that a letter was issued on 24th August, 1980 to Bombay M.P. Roadways by the General Manager. That Shri Mohd. Yusuf did not visit their Transport Company to obtain tender inspite of the fact that they had offered transportation charges therefore the case was registered by Special Police, C.B.I. as Case No. 25/80. The C.B.I. enquired into the matter and came to the following conclusion:—

“I therefore recommend R.D.A. for major penalty against Sri Mohd. Yusuf under order No. 17(1)(a) of the Standing Orders.....”

The above report of the C.B.I. was forwarded to the General Manager, WCL, Sohagpur by the Chief Vigilance Officer WCL, Nagpur with a request to take suitable disciplinary action against Mohd. Yusuf. Accordingly the workman was charge-sheeted vide charge-sheet dated 24th December, 1981 and Shri M. S. Chandrashekhar, Senior Personnel Officer was appointed Enquiry Officer. Enquiry was conducted from 16th March, 1982 to 11th May, 1982. Enquiry Officer examined seven witnesses for management and one defence witness and gave findings that the charges are proved. After the receipt of the findings of the Enquiry Officer an order of punishment dated 10th January, 1983 was issued. However, in their written statement dated 6th November, 1986 and rejoinder dated 4th March, 1986 management did not specifically plead or allege that who was the competent disciplinary authority as per Standing Orders. This Tribunal had framed the following issues and decided Issue No. 1 as preliminary issue against the management. My findings with reasons on the remaining issues are as under:—

### ISSUES

- Whether the enquiry is proper and legal ?  
(Decided on 18-11-1986)
- If not, whether the penalty awarded to workman is justified on facts of the case ?
- Whether the punishment awarded is proper and legal ?
- Relief and costs ?

Findings on Issue Nos. 2, 3 & 4.—It is convenient to decide the remaining Issue Nos. 2, 3 & 4 together. I therefore first proceed to examine the evidence adduced by the parties before this Tribunal. The burden was on the management to prove the misconduct. I will therefore first examine the evidence adduced by the management. In support of their case management examined Sekh Mukhtar, Manager of M/s. Bombay M.P. Roadways, Nagpur (M.W. 1), Nirmal Ghosh, Asstt. Stores Keeper (Central Stores) Burhar Sub-Area (M.W. 2), Narain Morya, Accountant of Burhar Group on Affidavit and relied on Ex. M/1 to Ex M/43. They were cross-examined on their Affidavit.

8. In fact, except for the statement of Sekh Mukhtar remaining witnesses of the management except for certain admissions made by the witnesses in favour of the workman are

not material. Therefore I need not burden the record with the details of their evidence.

9. Statement of Sekh Mukhtar is that he had sent the quotation Ex. M/35 on behalf of his company on the direction of his owner, Shri Virendra Pal Singh. He had received letter Ex. M/36 from Senior Personnel Officer, Sohagpur Area, and letter Ex. M/37 was sent to the General Manager, Sohagpur Area. Letter dated 4th August, 1980 (Ex. M/38) is signed by him. I will therefore examine this as documentary evidence. Ex. M/35 is the letter dated 9th July, 1980 giving quotation @ Rs. 175 per ton. Ex. M/37 dated 24th August, 1980 is the complaint saying that their representative Mr. Yusuf never visited their office for obtaining the quotation.

1. On the other hand, the statement of workman Shri Mohd. Yusuf (W.W. 2) is that he was assigned on 2nd August, 1980 the duty to collect the steel for the colliery. He was given the authority letter and his signatures were attested by the Senior Purchase Officer on the same. Workman further stated that before he left for Nagpur Mr. Karan Area Purchase Officer had orally told him that some letter of M/s. Bombay M.P. Roadways had been received by the General Manager in which transport company had quoted the rate of 175 per ton. Therefore he must obtain the quotation from that Company but the steel should be got transported from the Company who gives the lowest quotation. He therefore obtained the quotation Ex. M/38 to Ex. M/41, Ex. M/38 is the quotation of M/s. Bombay M.P. Roadways @ Rs. 175 per metric tonne. The quotation Ex. M/40 of Bombay Raipur Roadways being the lowest he got the steel transported through that Transport Company. He has further stated that on return he had written to Mr. Karan that M/s. Bombay M. P. Roadways is not reliable and good company and it is black listed as is shown in Ex. W/1. He has further stated that Ex. M/1 is not the copy of his authority letter which was given to him as is apparent from the fact that it does not bear signature of the Attesting Officer, viz., Senior Purchase Officer in portion marked A to A. He has also stated on oath that letter Ex. M/35 dated 9th July, 1980 alleged to be of M/s. Bombay M.P. Roadways was not shown to him at the time he had gone to Nagpur. His plea is that if he was shown this letter there should have been his acknowledgement on it which is conspicuously absent from it.

11. In this regard, one of the plea of the management was that in fact workman was sent to take the quotation and he was not authorised to get the steel transported but this is believed by the very letter Ex. M/1 dated 2nd August, 1980, perhaps it appears to be a copy of the letter written to Shri B. K. Sharma, Purchase Officer of WCL, Nagpur by the Senior Purchase Officer, Sohagpur Area which clearly says “we are deputing our representative Shri Mohd. Yusuf to arrange collection and despatch of Iron and Steel materials allocated for Sohagpur Area. His specimen signature is attested below.”

12. Even the charge says that “you were deputed in the month of July 1980 to go to Nagpur and arrange for transportation. None of the witnesses for the management supported this allegation. Therefore it is not proved that he was not authorised to get the steel transported and he was only deputed to get the tenders only from M/s. Bombay M.P. Roadways.

13. Next I will take up the other allegation made and held to have been proved by the Enquiry Officer and Disciplinary Authority. Next allegation is that before going to Nagpur a letter from M/s. Bombay M.P. Roadways dated 9th July, 1980 was received by the General Manager, Sohagpur Area wherein the firm had quoted the rate Rs. 175 per ton. “This rate was brought to your notice and in token of having firm”. This charge is sought to be proved by the statement of seen this you signed on the reverse of the said letter of the Shri Narain Morya (W.W. 3). His statement in cross-examination is that from the statement Ex. W/1 portion marked B to B “I meant to say that the endorsement made on the reverse of the letter dated 2nd August, 1980 was made when I had handed over the same to Senior Purchase Officer. I do not recollect to reference in portion marked B to B regarding the letter Ex. M/1 I have no intimation or knowledge of letter dated 9th July, 1970 of M/s. Bombay M.P. Roadways Ex. M/35”. He has further admitted that “if we had the letter Ex. M/35 we would have stopped the payment and

referred the matter to higher authority for clarification". In his examination-in-chief there is nothing to suggest to the contrary. Therefore his statement does not prove that the endorsement on the reverse of Ex. M/1 was made within the knowledge of the workman before he left for Nagpur. It is true that the workman has honestly admitted in his statement on oath that though he was informed about such a letter but he was not shown the same, otherwise he would have signed it in token of having received the information. It is true that the portion concerned does not bear his signature in token of having received the information. No other material witnesses examined during enquiry have been examined before this Tribunal. Some of those material witnesses like R. K. Lamba, Senior Clerk, Karan, Area Purchase Officer who is specifically alleged to have given the information to the workman are not examined before this Tribunal. Therefore their non-examination raises an adverse inference that if they had been examined they would not have supported the management. Thus for want of any reliable evidence on the point it is not proved that the said rates were brought to the notice of the workman and in token of having seen this the workman had signed on the reverse of the said letter of the firm. It is not disputed that the workman had visited Nagpur and obtained four quotations though as per rule only three quotations were required as has been stated by Shri Narvin Morya who had passed the bill submitted by the workman, but the allegations in the charge-sheet against the workman are that he was not authorised to call for above quotations when specific letter from Bombay M.P. Roadways dated 9th July, 1980 was given to him wherein the firm had quoted the rate of Rs. 175 per tonne. But the workman placed orders for higher quotation of Bombay Raipur Roadways at Rs. 268 per tonne which were more than that of Bombay M.P. Roadways. I have already come to the conclusion that the said letter of the firm quoting the rate of Rs. 175 per tonne was not shown to the workman but he was orally informed by Shri Karan, Purchase Officer which fact is honestly admitted by the workman. But his plea is that he took the quotation of Bombay M.P. Roadways Transport but since he gave higher rate of Rs. 275 per tonne he took three more quotations and awarded the contract to the lowest i.e. Bombay Raipur Roadways whose rates were the lowest @ Rs. 268 per tonne. This is what the workman had pleaded and stated on oath before this Tribunal. This was also his plea right from the very beginning.

14. In order to rebut this defence of the workman, the management has examined Shri Sekh Mukhtar (M.W. 1) the Manager of Bombay M.P. Roadways, Nagpur. His plea in para No. 4 of his Affidavit is that letter dated 4th August, 1980 (Ex. M/30) was signed by him but he had not written its contents because he had signed the blank letter head and gave to Shri Namdeo of New Haryana Transport Company. Besides this, he did not explain in what circumstances and why he gave a signed blank quotation form to Shri Namdeo of New Haryana Transport Company. The workman has examined Shri Namdeo (W.W. 1) of New Haryana Transport Company on oath before this Tribunal. His statement on oath is that it is not true that Shri Sekh Mukhtar had given him Ex. M/38 a blank letter head only bearing his signatures. In his cross-examination he stated that he does not know Mohd. Yusuf, therefore it is not true that he had collected Ex. M/38 and given it to Sekh Mukhtar. He denied on oath that he had typed the contents of Ex. M/38 himself. No material is brought out in his cross-examination to discredit his testimony. On the other hand, Shri Sekh Mukhtar (M.W. 1) stated that though he had given the blank letter head but he had not brought this fact to the notice of his owner at that time. He has also admitted that the blank letter head Ex. M/38 was not given to him either by the owner or the Manager of New Haryana Transport Company. Thus there is oath against oath. I will, therefore, examine the circumstances to see as to which of the statement are true.

15. Firstly as I have already stated Shri Sekh Mukhtar has not explained in what circumstances and why he gave Ex. M/38, the blank signed letter head, to a servant of another Transport Company, that too without permission or knowledge of his owner. Secondly, this conduct of his not only throws light on the character of Shri Sekh Mukhtar but also the dealing of his Company. Thirdly in order to save his skin now he can sneak anything in order to justify his unauthorised act. Fourthly the conduct of Shri Sekh Mukhtar and even the Company to whom he represented is also of doubtful. Though in Ex. M/33 dated 9-7-1980 he

had quoted the rate of Rs. 175 per tonne which finds reference in the letter of Senior Purchase Officer, Sohagpur Area written to Bombay M.P. Roadways on 17th July, 1980 nearly a week after this incident and nearly a month after the workman had obtained the quotations on 4th August, 1980. In his letter Ex. M/36 dated 17th July, 1980 the Purchase Officer of Sohagpur Area had written this relevant portion to the said Bombay M.P. Roadways "In this connection we refer to your quotation No. nil dated 3rd June, 1980 to our representative Shri Mohd. Yusuf, wherein you have offered Rs. 271 per metric tonne. It is not understood how within a span of one month the transportation charges can vary to such an extent i.e. approximately Rs. 100 per tonne. The letter went on to say that the work of transportation will be awarded to you if the rate is found to be competitive. This not only explains the dubious nature of work of the Bombay M.P. Roadways Co. but it also supports the act of the workman why he distrusted this Company which is also borne out through from subsequent events that Maharashtra Housing and Area Development Authority had black listed M.P. Bombay Roadways vide their letter dated 25th November, 1981 (Ex. W/1).

16. This is not all, there is still further material against this Company. In its very complaint letter dated 24th August, 1980 (Ex. M/37) written by some Sekh Mukhtar to General Manager, Sohagpur Area to say that Mr. Yusuf had never visited their office to obtain quotation. Even in this letter the quotations are lowered from even Rs. 175 per tonne to Rs. 170 per tonne. This shows that how this Company can change its stand from time to time in order to suit its convenience and obtain quotation at any costs. This also shows that perhaps because Mr. Yusuf did not cooperate in his underhand design he wanted to see him punished any how.

17. For the reasons aforesaid, I am of the view that Shri Sekh Mukhtar (M.W. 1) and the Company to whom he represents is unworthy of credence and no reliance ought to have been placed on them or their complaint. Thus, to my mind, learned Enquiry Officer erred in accepting his testimony compared to the evidence led by the workman. In the circumstances, it is also not proved that the workman manipulated to obtain inflated rates and caused the loss to the Company and committed breach of Cl. 17(i)(a) of the Standing Orders. Thus the findings of the Enquiry Officer and the Disciplinary Authority are perverse and as such are vitiated.

18. Lastly initiation of domestic enquiry and the order of punishment awarded has been challenged as being without jurisdiction. The plea of the workman is that Deputy Chief Engineer (E&M) who issued the charge-sheet and the Senior Engineer (E&M) who is purported to have issued the orders not being Manager/Owner/Agent on the management were not competent to issue the charge-sheet and the punishment order. Therefore they are bad in fact and a law and without jurisdiction. Clause (d) & (d) of Section 2 of the Certified Standing Orders of National Coal Development Corporation of India which are also applicable to the mines situated in the State of Madhya Pradesh respectively defines the Manager and Competent Authority. It is not the case of the management that it was the Manager who had issued the punishment order. The Competent authority has been defined Officer who is specifically nominated by the Managing Director by an order in writing and such orders are affixed to the Notice Board. Inspite of the objection on the ground of competency the management has neither specifically pleaded nor denied the pleadings of the workman nor adduced an iota of evidence to prove that the person who initiated and issued the orders of punishment was a competent authority. While on the other hand workman on oath has stated that he was working under the administrative control of Sub-Area Manager who was the competent authority for appointment and dismissal. This evidence has not been rebutted. The orders regarding the competent authority are bound to be in possession of the management but they failed to produce the same. Therefore an adverse inference has to be drawn against them. It is thus not proved that the order of punishment was passed by the competent authority.

19. However, even for the sake of arguments I hold that the enquiry was initiated and order of punishment was passed by the competent authority but the order of punishment as already referred to above was passed on the advice of the Chief Vigilance Officer. Thus it goes to show that the order was passed without application of mind on the advices of

others. As... such the order stands vitiated on this ground alone. I therefore hold that the order of punishment awarded is neither legal nor proper nor it is justified on the facts of the case. I decide these issues accordingly.

20. As a normal rule in such circumstances workman is entitled to the relief claimed by him. There are no circumstances in the case to the contrary to show that the workman is disentitled to get the reliefs claimed by him. In the circumstances I answer the reference as under:—

That the penalty of Rs. 17,600 and stoppage of two increments without cumulative effect imposed on the workman Shri Mohd. Yusuf, Works Supervisor, Regional Workshop, Burhar by the management of Western Coalfields Limited, Singhapur Area for not transporting Steel at the rate of Rs. 175 per Metric Tonnes from the M/s. Bombay M.P. Roadways, Nagpur is not justified being illegal and improper. He is entitled to the refund of amount of Rs. 17,600 if so effected or the refund of amount already deducted from any source and the two increments from the date they have been stopped. He is further entitled to Rs. 200 as costs from the management.

V. S. YADAV, Presiding Officer

[No. 22012/152/83-D. III(B)/D.V-IR(C-II)]

का० ग्रा० 1328.— श्रोतोगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार व बैराटन कोलफाइल्ड्स लिंग, देवकुण्ठपुर एरिया के प्रबंधताल के संबंध नियोजकों और उनके कमनार्गों के बीच, अनुबंध में निर्दिष्ट श्रोतोगिक विवाद में केन्द्रीय सरकार श्रोतोगिक प्रधिकरण, जबलपुर के पचास को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-5-89 को प्राप्त हुआ था।

S.O. 1328.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Baikunthpur Area of M/s. W.C. Ltd. and their workmen, which was received by the Central Government on 5-5-89.

#### ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)(69)/1984

#### PARTIES :

Employers in relation to the management of Baikunthpur Area of W.C. Ltd. District Surguja (M.P.) and their workman, Shri Guru Bux Singh Mullick, Overman, V.T.I. Post Office Bisrampur Colliery, District Surguja (M.P.).

#### APPEARANCES :

For workman—Shri N. L. Pandey.

For management—Shri P. S. Nair, Advocate.

INDUSTRY : Coal Mines DISTRICT : Surguja (M.P.)

#### AWARD

Dated : April 25, 1989

This is a reference made by the Ministry of Labour vide its Notification No. L-22012(140)/83-D.III (B)/D.V dated 5th September, 1984 for adjudication of the following dispute—

“Whether the action of the management in dismissing Shri Guru Bux Singh Mullick, Overman V.T.I. with effect from 21-7-1982 without charge-sheet, enquiry etc. by the General Manager of Baikunthpur Area of W.C.L. District Surguja is justified ? If not, to what relief the workman is entitled ?”

2. Parties filed their pleadings, documents etc. on which the following issues were framed :—

1. Whether the management is entitled to lead evidence to prove misconduct before this Tribunal ?
2. Whether the action of the management in dismissing Shri Guru Bux Singh, Overman, V.T.I. with effect from 21-7-82 without charge-sheet, enquiry etc. by the General Manager of Baikunthpur Area of W.C.L. District Surguja is justified ? if not, to what relief the workman is entitled ?
3. Whether the Overman is a workman for the purpose of I.D. Act?
4. Relief and costs.

3. I have heard the parties on Issue Nos. 1, 2 & 3 and have decided the issues in favour of workman by my order dated November 20, 1987 which will form part of this award. I have already stated briefly the facts of the case in my above order dated 20th November, 1987, therefore I need not repeat it again.

4. It is relevant to reproduce para 9, 11 and 12 of my order dated 20th November, 1987 which are—

“9. For the reasons discussed above I hold that though the action of the management in terminating the services of the workman without charge-sheet and enquiry etc. is not justified but the subject matter of relief will depend on the evidence adduced by the parties before this Tribunal. I hold and decide Issue No. 1 and 2 accordingly.”

“11. In view of my finding above I hold that the management is entitled to lead evidence to prove misconduct before this Tribunal and the workman is entitled to lead evidence in rebuttal.”

“12. Parties are therefore directed to file relevant documents on which they proposed to rely in support of their case on 18-12-1987. Thereafter the case will be fixed for evidence of parties:

5. Management though requested on 18-12-1987 to file documents they did not do so till 5-2-1988. Therefore on 5-2-1988 the case was fixed for evidence of parties. Management examined three witnesses Shri Kishan Bhole, Driver (M.W.1), Shri G. C. Chanda, Superintendent of Mines at Bhatgaon Colliery (M.W.2) and Shri D. P. Choudhary, General Manager, Baikunthpur Area consisting of Charcha, Kalkona, Bisrampur and Bhatgaon Collieries at the relevant time. All the above witnesses were cross-examined by the workman. On the other hand, workman examined himself as W.W.1 and Shri Surya Bhan Singh (W.W.2) who was working as Mining Sirdar in Bhatgaon Colliery from 1978. Therefore now I proceed to examine the statements of the witnesses and documentary evidence on record as to what relief the workman will be entitled to if any as I have already held in my order dated 20th November, 1987 that the action of the management in terminating the services of the workman without charge-sheet and enquiry etc. is not justified. In view of the above order I allowed the parties to lead evidence to prove misconduct before this Tribunal.

6. I will first examine the statements of management's witnesses. Shri Kishan Bhole (M.W.1) was working as Driver in Baikunthpur Area from August 1978 to December, 1983. He has stated that he was on duty on 18-7-1982, the date of incident. In his examination-in-chief he has stated that seven persons including Shri Guru Bux Singh were standing to talk to the General Manager. They surrounded Shri D. P. Choudhary to talk to him. Shri Choudhary told them that as he has to return back to his office and if matter is urgent they should come to his office. When Shri Kishan Bhole started the jeep one man caught him and Sirdarji pulled the stopper of the jeep. He has further stated that there were hot exchange of words but nothing more transpired with the General Manager. In his cross-examination he has admitted Shri Guru Bux Singh talks very loudly and is always stick

to his demands. Therefore the officers were annoyed with him. Further at the time of this incident Gurbax Singh had prayed to G.M. that poor worker has been dismissed so at least he should listen to him. Besides this Guru Bux Singh said nothing.

7. Next witness is Shri G. C. Chanda (M.W. 2) who was Supdt. of Mines at Bhatgaon Colliery on the date of incident i.e. on 18-7-1982. He has stated that when Shri Choudhary was to go by Jeep Shri Mallick entered and switched off the started jeep and assaulted Mr. Choudhary by pulling his Collar. He then tried to drag out Mr. Choudhary and forced him to talk to him. In his cross-examination he has admitted that at the relevant time his confidential was supposed to be written by Shri D. P. Choudhary.

8. Next witness is the main witness Shri D. P. Choudhary the then General Manager who has been alleged to have been assaulted by Shri Mallick, the workman concerned. He has stated that on 18-7-82 I reached Bhatgaon Colliery in my jeep at about 6.30 P.M. for routine inspection of the colliery. At about 7 p.m. when I was discussing official matter with Shri Chanda, Supdt. of Mines Shri Mallick entered his office. Shri Mallick was in infuriated mood and he wanted that certain matters relating to Mining Sirdars and Overman of Bhatgaon Colliery should be then and there discussed. Further he has stated that "at about 8.00 p.m. when I was coming out of office road and set down in the jeep and the Driver started the jeep Shri Mallick rushed towards jeep, entered into the front seat of the jeep and pulled the choke of the jeep due to which the jeep came to a stop. He then switched off the ignition and forcefully took away the key of the jeep and kept it with him. Then he kept hold my Collar and tried to drag me out of jeep and threatened to kill me unless and until I discuss all the issues with him and take decision then and there."

9. These are only three witnesses examined by the management and I find that the evidence on material point is disceptant. Shri G. C. Chanda in his statement stated that when Mallick came to his office he said to Shri D. P. Choudhary that he will see how he refused to talk. But Shri D. P. Choudhary, complainant, himself did not support him on this point. His version is that he told him that he first hold the discussion with Shri Chanda and later he may come to Baikunthpur for discussion with him if necessary. He then left. This belies the story of giving threat in the office. Shri G. C. Chanda and Shri D. P. Choudhary both have stated that Shri Mallick assaulted Shri Choudhary by pulling his Collar and tried to drag him out but according to Shri Kishan Bhopole, the driver who was sitting inside the jeep admitted that it was Suryabhan Ji who pulled him out from the Jeep. Sirdarji (Mallick) only told the General Manager that you have come a big man so he cannot talk but he has to listen others and there was only hot exchange of words. Nothing more transpired with the General Manager. Thus this witness does not support the story of pulling the Collar of Shri D. P. Choudhary and attempt to drag him out from the Jeep by Shri Mallick. This allegation is made against Shri Suryabhan who was also a co-accused in the criminal case with the workman, Shri Mallick, as is apparent from EX.W/7.

10. The story of the workman on the other hand is that he was the Deputy Zonal Secretary of the INMOSSA a registered trade union. On 17-7-1982 he had received the intimation from the Secretary of the Association that one Shri Kumar Kaushlan had been terminated by the management on improper ground and he was not allowed to go for his Gaona (bringing his wife for the first time from his parent place). Shri D. K. Roy, Colliery Manager, had also intimated the executives of the Union to attend the meeting with the Superintendent of Mines, Shri Chanda on 18-7-1982 at 5 p.m. vide Ex. W/6. He reached the office of the S.O.M. at about 6.30. During the course of discussion regarding Kunwar Kaushlan Shri Chanda said that he is not the appointing authority and since the General Manager is coming they may wait and talk to him in this regard. Therefore when Shri Choudhary came they went and appealed to him to discuss the matter of Kaushlan. But he told them that there he is on tour, they may come to Headquarters but on their pleading he permitted them to talk over the matter and he

accepted the request to post him to his previous place of posting. Therefore they had disbursed. Other witness examined is Suryabhan Singh. His version is that he was also prosecuted in this case by the police but in fact the story of the management is false. On perusal of both sides evidence and documents I find that the report Ex. M/1 and Ex. M/6 also go to show that the story has been exaggerated from time to time, by the subordinate of Shri Chowdhary who was General Manager and made into a serious affair so as to make out a case of termination without even an enquiry and without following the force of natural justice as the summary dismissal order Ex. M/8 which was approved by Shri D. P. Chowdhary on 19-7-1982 goes to show.

11. On the other hand, workman and his witness has also tried to completely minimise his role to save their skin. The true story appears to be that when Shri D. P. Choudhary refused to talk over the matter which the Union though him important they almost gheraoed his Jeep and pulled out the ignition key to stop him from going and there were hot exchange of words perhaps from both sides. So ultimately Shri Chowdhary had to re-enter the office and discuss the matters. But because Shri D. P. Chowdhary felt humiliation he took very strong step and got Shri Mallick dismissed without even a formal enquiry and also went to the extent of prosecuting him but he was acquitted and given benefit to doubt in criminal case later on.

12. No doubt Union has a right to press demands but it does not authorise the Union workers to take the law in their own hands. A striking balance is to be maintained. Strike or Gherao may be an excuse as legitimate act but to pull out the keys of the Jeep and compel an officer to get down and then discuss the matter then and there, to my mind, amounts to high handedness and erratic behaviour. In a similar case of which the facts are narrated below the Hon'ble Supreme Court in the case of Rama Kant Misra Vs State of U.P. and others (1982 Lab. I.C. 1790 SC) observed that the extreme penalty of dismissal is not justified. The relevant para is as under :—

"Shri Rama Kant was charged for misconduct under clauses 20 (9) 18 and 28 of the Standing Orders for disorderly behaviour or conduct likely to cause a breach of peace threatening an employee within the premises and conduct prejudiced to good order and discipline".

2. The specific allegation is that on November 18, 1971, around 2.50 p.m. appellant was complaining about the deduction that was being made from his wages for his absence from the place of work and late attendance with Shri Mahendra Singh. When Shri Mahendra Singh replied that he had no separate rules for him, the appellant is alleged to have lost his balance. The threatening language alleged to have been used by the appellant when freely translated reads :

"Are other persons your father. I will make you forget your high handedness either here or somewhere else. An Officer of yesterday's making discloses power consciousness."

The Hon'ble Supreme Court laid down that "these words indicate that even though misconduct is proved and a penalty has to be imposed, the extreme penalty of dismissal or discharge was not justified in the facts and circumstances of the case meaning thereby that the punishment was either disproportionately heavy or excessive. It is well recognised principle of jurisprudence which permits penalty to be imposed for misconduct that the penalty must be commensurate with the gravity of the offence charged."

13. From the above I am of the opinion that looking to the facts and circumstances of the case it will meet the ends of justice if the workman is not awarded back wages which will to my mind will be a sufficient punishment.

14. As a fact report on behalf of the workman it has been contended that he was committed in the criminal case and therefore he be reinstated from the date of termination i.e.

21-7-1982 and further he be awarded back wages with compensation. I am unable to agree, firstly the workman was acquitted for want of evidence and was given benefit of doubt. Secondly the judgement of the criminal court was passed much before the services of the workman were terminated. Therefore the acquittal does not entitle him to full back wages or compensation. I decide the Issue No. 4 accordingly and answer the reference as under :—

That the action of the management in dismissing Shri Guru Bux Singh Mallick, Overman V.T.I. with effect from 21-7-1982 without charge-sheet, enquiry and even on merit by the General Manager of Baikunthpur Area of W.C.L., District Surguja is not justified. The workman is, therefore, entitled to reinstated with effect from 21-7-1982 with continuity of service but without any back wages till the date of this award. No order as to costs.

V. S. YADAV, Presiding Officer.

#### ANNEXURE

PART OF AWARD IN CASE NO. CGIT/LC(R)(69)/1984.  
BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
CUM-LABOUR COURT, JABALPUR (M.P.)

CASE NO. CGIT/LC(R) (69)/1984.

#### PARTIES :

Employers in relation to the management of Baikunthpur Area of W.C. Ltd. District Surguja (M.P.) and their workman Shri Guru Bux Singh Overman, V.T.I Post Office Bisrampur Colliery, District Surguja (M.P.).

#### APPEARANCES :

For workman : Shri N. L. Pandey.

For management : Shri P. S. Nair, Advocate.

INDUSTRY : Coal Mines DISTRICT : Surguja (M.P.)

#### ORDER

Dated November 20, 1987.

The Central Government in the Ministry of Labour vide its Notification No. L-22012(140)/83-D. III (B) D. V. dated 5th September, 1984 referred the following dispute, for adjudication :—

"Whether the action of the management in dismissing Shri Guru Bux Singh Mallick, Overman V.T.I. with effect from 21-7-1982 without charge-sheet, enquiry etc. by the General Manager of Baikunthpur Area of W.C.L. District Surguja is justified? If not, to what relief the workman is entitled?"

2. The facts material for the decision of the above dispute are that the workman was working as Overman and was charge-sheeted for misconduct by the management. The management on the complaint of Shri D. P. Chowdhary, General Manager, W.C.L., Baikunthpur Area without holding a domestic enquiry terminated the services of the workman vide order dated 18/21-7-1982 which reads as under :—

"On 18-7-1982 at about 7.30 P.M. you Shri G. S. Mallick forcibly entered into the Jeep No. CPL-9294, assaulted Sir D. P. Chowdhary, General Manager, W.C.L. Baikunthpur Area who was sitting in the jeep, switched off the vehicle, took out the key and forcibly dragged him out of the jeep and compelled him to go the office of the Supt. (Mines) Bhataon Colliery and abused him in filthy language all along. The above misconducts committed by you are considered to be of very grave nature and constitute serious misconduct under the S. No. 17

(i)(r) of the Certified Standing Orders under which your service is governed. The misconduct committed by you is so grave that dismissal from the services is the only befitting punishment and as such I hereby order for your dismissal from the services of the Company with immediate effect."

3. The case of the management is that since Shri Mallick was holding the post of Overman which is supervisory in nature and was drawing more than Rs. 1600/- per month he is not a workman within the definition of Sec. 2(s) of the Industrial Disputes Act, 1947. The management further submitted that on facts and circumstances of the case, departmental enquiry was not necessary. However, management prays for an opportunity to prove the misconduct before this Tribunal.

4. The case of the workman is that he was appointed as General Mazdoor on 1-1-1975 under the Mining Establishment and was promoted as Shot Fitter, Mining Sirdar and Overman respectively on 16-5-1976, 18-8-1977 and 16-8-1980. He started taking active part in legitimate trade union activities and ultimately he became Dy. Zonal Secretary Indian National Mines Overman, Sirdars and Shot Fitter's Association. In the capacity of Dy. Zonal Secretary he used to take up the grievances of the workmen. On the intimation of the Colliery Manager he met on 18-7-1982 Shri D. P. Choudhary, the then General Manager to get the case of the alleged wrongful removal of Shri Kumar Kaushlendra settled amicably. It is further contended by him that the management was fully aware of the provisions of the Standing Orders which have the force of a statute and the management intentionally and wilfully avoided to follow the procedure laid down under the Standing Orders No. 17(i) and arbitrarily, illegally and unlawfully dismissed him with effect from 21-7-1982 only with the malafide intention and malacious attitude of taking revenge against the applicant for his legitimate and lawful trade union activities and also with an ulterior moto of breaking the solidarity of the workmen with terror. No order or punishment under Standing Order No. 17 (i) shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the allegations made against him. The workman has further contended that the management managed to get F.I.R. Lodged with the police against four persons by some officers other than the person alleged to have been assaulted and a criminal case at Surajpur in the Court of Judge Magistrate, Class I was initiated and the applicant was exonerated honourably. Therefore the applicant is entitled to be reinstated to his former post of Overman V.T.I. with full back wages as he was dismissed from service unlawfully, illegally and unjustifiably.

5. Admittedly there was no enquiry. Therefore I framed the following issues which with my reasons and findings are as under :—

#### ISSUES.

1. Whether the management is entitled to lead evidence to prove misconduct before this Tribunal?
2. Whether the action of the management in dismissing Shri Guru Bux Singh, Overman, V.T.I. with effect from 21-7-1982 without charge-sheet, enquiry etc. by the General Manager of Baikunthpur Area of W.C.L. Distt. Surguja is justified? If not, to what relief the workman is entitled?
3. Whether the Overman is a workman for the purpose of I. D. Act.
4. Relief and costs.

#### Findings :—

6. Issue No. 1, 2 : The contention of the management is that as laid down in AIR 1973 SC 1227 Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. Vs. Management that since no enquiry was held by the management even then they are entitled to lead evidence before this Tribunal to prove misconduct. On the other hand, the contention of the workman is that in view of the Standing Orders and the definition of retrenchment given in Sec. 200 of the I. D. Act termination without domestic enquiry would

amount to retrenchment and as such the workman is entitled to be reinstated with full back wage. The second limb of the contention of the workman is that the Tribunal cannot go beyond the scope and ambit of the reference made by the Central Government.

7. In this connection, my attention has been drawn to the wordings of the reference which no doubt says whether the action of the management in dismissing without charge-sheet, enquiry etc. is justified? Admittedly the management held no domestic enquiry against the workman. Therefore if the contention of the workman is correct then naturally this Tribunal is bound to hold that it is not justified. But there is second limb of the reference as well i.e. if not to what relief the workman is entitled? At this stage I would like to cite the relevant verdict of the Supreme Court given in the case of Workman of Firestone Tyre Co. (P) Ltd. (Supra) to the following effect:—

“From the proviso it is not certainly possible to come to the conclusion that when once it is held that enquiry has not been held or is found to be defective, an order reinstating the workman will have to be made by the Tribunal. Nor does it follow that the Proviso deprives an employer of his right to adduce evidence for the first time before the Tribunal.”

From the above it is crystal clear that Hon'ble Supreme Court has laid down the law asking the Tribunal that in cases where no domestic enquiry has been held or where it has been held and is found to be defective the management is entitled to prove misconduct before the Tribunal. This direction has therefore to be followed.

8. Coming to the second contention of the workman that this Tribunal cannot travel beyond the scope and ambit of the reference made by the Central Government there could hardly be any dispute over this contention. But I am of the opinion that as far as the justification of the action taken by the management is concerned it is a separate issue to the relief claimed by the workman. This Tribunal can hold the action unjustified but at the same time direct and relief subject to the evidence being taken regarding the relief.

9. For the reasons discussed above I hold that though the action of the management in terminating the services of the workman without charge-sheet and enquiry etc. is not justified but the subject matter of relief will depend on the evidence adduced by the parties before this Tribunal. I hold and decide Issue No. 1 and 2 accordingly.

10. Issue No. 3:—This issue shall not detain me long since it is now well settled that the Overman is a workman within the meaning of Sec. 2(s) of the I. D. Act. This point has already been decided by my learned predecessor, Shri A. G. Qureshi (now Hon'ble High Court Judge M.P.) in case No. CGIT/LC(C)(154)1980 in the following words:—

“The Majumdar Award had considered the respective contentions of the Unions and the different managements in respect of the classification of the Overman and after considering the nature of duties the Majumdar Award in para 563 of the Award has held that the Overman and Mining Sirdar are also skilled manual workers. According to the Majumdar Award although the duties of the overman are supervisory in nature but they are not purely supervisory and the manual part of the duties is so considerable that whatever the supervision an overman does, is necessarily subordinated to the manual work.”

The aforesaid award has not been superseded or modified by any subsequent award. Therefore, in view of the Majumdar Award I hold that the applicants are workmen.”

I therefore fully agree with the above decision and hold accordingly.

11. In view of my finding above, I hold that the management is entitled to lead evidence to prove misconduct before this Tribunal and the workmen is entitled to lead evidence in rebuttal.

12. Parties are therefore directed to file relevant documents on which they proposed to rely in support of their case on 18-12-1987. Thereafter the case will be fixed for evidence of parties.

V. S. YADAV, Presiding Officer.

[No. I-22012/140/83-D. III-B/D.V./IR(C-II)]

R. K. GUPTA, Desk Officer.

नई शिल्पी, 17 मई, 1989

का. नं. 1329.—शास्त्रीय विवाद प्रजिनिवास, 1917 (1947 ग्रंथ 11) का धरा 17 के अनुसार में, केन्द्रीय सरकार द्वारा स्टेट बैंक के गवर्नर के दंडन नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित शास्त्रीय विवाद में केन्द्रीय सरकार शास्त्रीय विवाद प्रजिनिवास, जबलपुर के अनुसार वी प्रकाशित करायी है श्री केन्द्रीय सरकार द्वारा 8 मई, 1989 को प्राप्त हुआ था।

New Delhi, 17th May, 1989

S.O. 1329.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure in the industrial disputes between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 8th May, 1989.

#### ANNEXURE

BEFORE SHRI V. S. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, JABALPUR (M.P.)

Case No. CGIT/LC(R)30/1987

#### PARTIES :

Employers in relation to the management of State Bank of India, Regional Office, Marhat, Jabalpur and their workmen S/ Shri Vinod Kumar Choukse Village Jagidhana, P.O. Nigri, Teh. Bergi, Jabalpur and Shri Nirmal Kumar Patel, C/o Shri Khare, 500 Beoharbagh, Jabalpur (M.P.).

#### APPEARANCES :

For Workmen S/ Shri R. K. Gupta, Advocate and D. P. Tiwari.

For Management Shri B. G. Garg.

INDUSTRY : Banking

DISTRICT Jabalpur (M.P.)

#### AWARD

Dated 24-4-1989

By Notification No. I-12012/343/86-D.II(A) dated 3rd April, 1987 the following disputes in respect of Shri Vinod Kumar Choukse and Shri Nirmal Kumar Patel has been referred by the Central Government to this Tribunal for adjudication:—

- Whether action of the management of State Bank of India in terminating the services of Shri Vinod Kumar Choukse w.e.f. 1-1-86 and not considering him for further employment while recruiting fresh hands under Sec. 25H of the I.D. Act is justified? If not, to what relief the workman is entitled?“

(2) Whether the action of the management of State Bank of India in terminating the services of Shri Nirmal Kumar Patel w.e.f. 2-2-86 is justified? If not, to what relief the workman is entitled?

2. The common ground in the case of Shri Vinod Kumar Chouksey is that Shri Chouksey was employed in various capacity at different Branches of the State Bank of India i.e. Tula Ram Chowk Branch, Ranjhi Branch and GCF Branch respectively as Badli Watchman, Waterman and Messenger for a very short period i.e. 57 days 7 days and 16 days respectively from 29-10-1984 to 11-1-85, 11-3-1985 to 1-4-85 and 16-12-1985 to 31-12-1985. His services were terminated by the G.C.F. Branch with effect from 1-1-86.

3. The common grounds in respect of Shri Nirmal Kumar Patel are that Shri Patel was in employment of the State Bank of India at Kamla Nehru Nagar Branch, Jabalpur with effect from 18-9-1984 to 1-2-1986, but according to the management in between the above period he also worked as Canteen Boy from 17-12-1984 to 31-8-1985 and for the rest of the period he worked as Messenger.

4. It is also a common ground of the parties that the workmen concerned were not given appointment or termination orders in writing. They were not given proper notice or pay in lieu of notice or any retrenchment compensation.

5. The case of Shri Vinod Kumar Chouksey further is that he was stopped from working from 1-1-86 by engaging a stranger in his place for attending the same work which the workman was doing. He was cleaning the counters and furniture, serving drinking water to the staff and customers, carrying books, registers, distributing the dak etc. These work are of a permanent nature. No disciplinary or other departmental action was contemplated or taken against him. His discontinuance of service is arbitrary, unjust and illegal as the management has violated the provisions of the Sastri Award and the I.D. Act, 1947. Therefore he is entitled to be reinstated with full back wages.

6. The case of the management further regarding Shri Choukse is that the applicant's employment at a particular branch cannot be tagged with the employment at the other branch for the purposes of continuous employment. The Branch Manager of a Branch has authority to employ on daily wages and he is the sole employer. The Branch Manager at different Branch is another employer in relation to the same workman if he engages him subsequently. The applicant did not even complete 240 days during the preceding year and therefore he is not entitled to protection under the I.D. Act. He could not have been engaged on a permanent basis as he had not completed even 90 days of continuous employment at one place at one stretch and therefore he was not considered for continuous employment. He was a daily rated employee and could be terminated in terms of the contract. After all for jobs requiring full-time work someone or the other has to be kept in a business concern. He was not employed for full time. There is no illegality involved in the action taken by the management against him. He is not entitled to any relief.

7. The case of the workman, Shri Nirmal Kumar Patel, further is that he was attending to the work of cleaning Bank's furniture, preparing and serving tea to the staff, fetching and serving drinking water to the members of staff and public. He was also distributing Bank's dak, carrying books, ledgers, registers and vouchers etc. These work are of a permanent nature. When he was stopped from work another person named Bhagirath Prasad Sahu was engaged for attending to the same work which he was performing. For accommodating new persons his services were discontinued without complying with the mandatory directions of the Sastri Award as well as the I.D. Act. Therefore for his termination of service is arbitrary, unjust and violative of the provisions of law. He is therefore entitled to the benefits of continuous service, reinstatement with full back wages, leave, medical aid uniforms and liveries etc as are permissible to Sub-staff of the Bank.

8. The case of the management further is that the applicant, Nirmal Kumar, was appointed on daily wages basis by the Branch Manager at Kamla Nehru Nagar Branch on 18-9-1984 initially at Rs. 10 per day as messenger. He worked as under :—

1. From 18-9-1984 to 15-12-84 as Messenger.	89 days
2. From 17-12-1984 to 31-8-85 as Canteen Boy in Staff Welfare Canteen and was paid Rs. 150 per month.	
3. From 2-9-1985 to 1-2-1986 as Messenger (including holidays).	147 days.

He did not turn up at the Branch to work from 3-2-1986. Thus of his own, he left the job and was not terminated. The management has further contended that it is true that the applicant was performing duties of messenger so long as he was in the employment of the Bank but it is specifically denied that he was engaged permanently. Since the applicant did not report for duty on 3-2-1986 as usual, another person Bhagirath Sahu was engaged as messenger for day-today work on daily wages who worked from 3-2-86 to 29-9-86. Then one Rajesh Kumar was engaged and he worked from 1-10-1986 to 13-10-1986. After Rajesh Kumar one A. K. Shukla worked from 14-10-1986 to 7-1-87, Raj Kishore Upadhyay worked from 21-1-87 to 11-2-87 and Rajendra Prasad Mitra worked from 12-2-86 to 15-3-1986. The management has further contended that for day to day work the Branch Managers are authorised to engage persons on daily wages. For regular employment even as Messenger, a selection has to be held by a selection body duly constituted in accordance with the procedure of the Bank. No regular employment could be provided by the Branch Managers. The management has therefore not violated any mandatory provisions of the Sastri Award or Industrial Disputes Act. Workman is therefore not entitled to any relief.

9. The management has also contended that one Shri D. P. Tiwari who has filed the statement of claim on behalf of the workmen is an unauthorised person. The individual can only file the statement of claim. The reference has been made by the Ministry of Labour under Sec. 10(1)(d) (2A) of the I.D. Act. The statement of claim is also signed by the individual workman concerned. Shri D. P. Tiwari therefore can very well represent the individual workman being an employee of the Bank. The objection of the management is therefore overruled.

10. Now I take up the case of Vinod Kumar Choukse. Admittedly Shri Choukse had worked in different Branches of the Bank i.e. Tula Ram Chowk, Ranjhi and G.C.F. for 57 days, 17 days and 16 days respectively and he was engaged by different Branch Managers. Therefore the question for determination is whether the applicant will be deemed to have worked for one employer in view of the fact that the Branches of the Bank in which he worked were under the management and the control of the State Bank of India. In this connection, on behalf of the Bank my attention has been drawn on judgments delivered by this Tribunal in Case No. CGIT/LC(R)(41)/86 decided by me and another judgment by my learned predecessor Justice Shri K. K. Dube in Case No CGIT/LC(R)(36)/83 in which it has been laid down that the workman cannot be said to be under the same employer when he worked in two different branches. The recruitments in the Bank is governed by certain set of rules. Appointments on temporary nature are contemplated in para 20.7 of the Sastri Award but in the instant case he would not come in the category of appointment contemplated in the Sastri Award. The power given to appoint for such a workman was given to the Manager or the Officer-in-Charge of the Branch. Therefore when the workmen employed by one branch he cannot said to be the servant of the other branch.

11. In the instant case it is pertinent to note that the applicant had not worked continuously from one Branch to the other. The applicant has himself stated in the pleading that he was initially employed as Sub-staff at Tula Ram Chowk Branch, Jabalpur from 29-10-84 to 11-1-85, in Ranjhi Branch

from 11-3-85 to 29-3-85 and G.C.F. Branch from 16-12-1985 to 31-12-1985. Thus it is crystal clear that he was employed at the above mentioned branches for temporary period at a particular tenure. As the Branch Managers were different at these place the employers were different each time. Neither there was one employer nor was the employment continued. As such the period of employment at one Branch cannot be clubbed with that of other Branches where he was subsequently employed. As such the provisions of Sastry Award or Section 25F of the I.D. Act do not apply.

10. It is contended by Shri Chouksey that he was stopped from working from 1-1-1986 and in his place a stranger engaged for attending the same work which he was doing. In this connection he gave his evidence before this Tribunal and stated that after his termination Shri Nil Kanth, Tirath Prasad and Rajendra Patel were respectively employed. Except the bold statement of the applicant there is nothing on record to support the plea of the applicant that in his place some stranger/persons named above were employed after he was stopped from work on 1-1-1986. Thus it is not proved that the management has contravened Sec. 25H of the I.D. Act. Consequently I hold that the action of the management of State Bank of India in terminating the services of Shri Vinod Kumar Chouksey with effect from 1-1-86 is justified as it is not proved that the management has violated the provisions of Sastry Award or Industrial Disputes Act, particularly Sec. 25II of the I.D. Act.

11. Now I take up the case of the workman, Shri Nirmal Kumar Patel. Besides the pleading narrated above the workman, Shri Patel, has filed an affidavit in support of his case and he was cross-examined by the management. In his examination-in-chief on affidavit he has stated that he worked in the State Bank of India, Kamla Nehru Nagar Branch, from 18-9-84 to 1-2-1986 continuously. He was attending to his duties daily at about 9.15 a.m. When he asked for his monthly pay for the month of December, 1984 (payable in January 1985) Shri Dixit told him to receive Rs. 150 p.m. and if the same is not acceptable to him, he is at liberty to leave the service and Shri Dixit further told that as per direction of the Regional Manager-1, Jabalpur Shri Narendra Kumar Yadav is to be paid the salary of permanent Messenger from January 1985. As such he was not paid his full salary and the workman was compelled to do the work on Rs. 150 per month. After the transfer of Shri Dixit Shri B. P. Soni joined as Branch Manager. When he approached Shri Soni, the Branch Manager, who told him that some other officer is pressurising Shri Soni to give employment to one Bhagirath Prasad. On 3-2-1986 he went to the Bank as usual, but Shri Soni told him to bring a letter from the Regional Manager, but the Regional Manager also told the workman that since applicant was not employed by him therefore nothing will be given in writing. Again when he went to Branch office Shri Soni told him that he has kept Shri Bhagirath and therefore he has not been given the work. In his cross-examination he has stated that he was selected by the Branch Manager, Shri Dixit, as Messenger. He is not aware of any recruitment rules of the Bank. He has admitted that he worked as a Canteen Boy from 16-1-1984 to 21-8-1985. On the other hand, management examined Shri Bhagirath Prasad Soni (M.W. 1) an officer of Kamla Nehru Nagar Branch, Jabalpur. He stated that Nirmal Kumar Patel started working as Messenger from 2nd September, 1985 and worked there till 1st February, 1985. He was orally appointed by the Branch Manager as Temporary Messenger. He was not given any appointment order or any termination order. Since Patel himself stopped attending his duties he gave neither any notice nor pay in lieu of the notice or any retrenchment compensation. Learned representative of the workman has compensated. Learned representative of the workman has argued that the management has not followed the mandatory provisions i.e. paragraph 495 of the Sastry Award while engaging the workman as no written order has been issued to him. Para 495 of the Sastry Award reads as under:

“...We further direct that on a candidate's appointment as a temporary employee, a probationer or a permanent member of the staff, the Bank shall give him a written order specifying the kind of appointment and the pay and allowances to which he would be entitled and that such a written order shall be given on the appointment of a part-time employee also.”

Admittedly no such appointment order while engaging the workman twice as Messenger was issued to him in writing, which is crystal clear that the management has not followed the provisions contained in Para 495 of the Sastry Award. It is further argued that after retrenchment of the workman fresh candidates have been appointed from time to time and the workman has not been offered work. The management have therefore violated Sec. 25-H of the I.D. Act. In this connection, workman Shri Patel besides his pleading he has stated on oath that he was not offered work from 3-2-1986 and in his place other persons were appointed. This fact has also been admitted by the management in para 5 of their pleading which is being reproduced below :

“It is denied that he was stopped from attending his duties effective from 2-2-86. Since the applicant did not report for duty on 3-2-86 as usual, another person Bhagirath Sahu was engaged as messenger for day-to-day work on daily wages. He worked from 3-2-1986 to 29-9-1986. He did not come. Then, one Rajesh Kumar was engaged and he worked from 1-10-1986 to 13-10-1986. On his leaving the job, one A. K. Shukla was engaged and he worked from 14-10-1986 to 7-1-1987. Thereafter, on his leaving the job, one Raj Kishore Upadhyay worked from 21-1-1987 to 11-2-1987. In between Rajendra Prasad Mitra was engaged and he worked from 12-2-1986 to 15-3-1986.”

There is not an iota of evidence that the workman was offered the work on 3-2-1986. On the other hand, workman has stated that he was running from pillar to post i.e. Branch Manager to Regional Manager but he was refused work on a flimsy ground that some other person has been engaged. To my mind, this is a clear violation of S. 25H of the I.D. Act.

12. Admittedly while engaging the workman no appointment order was issued. Likewise no termination order was issued. Neither notice nor pay in lieu of notice was offered or paid before the stoppage/termination of work to the workman, although admittedly the workman concerned served the Bank as Messenger for long period i.e. from 18-9-1984 to 1-2-1986 except from 17-12-1984 to 31-8-85 when he worked as Canteen Boy.

13. In the circumstances it is proved that after the termination of the workman a few persons were engaged in his place. If the work was there and after his termination it was necessary to appoint another man he should have been given a chance and provisions of I.D. Act should have been complied. The management should have maintained a register of such temporary workers and applied the principles of “last come first”. As the management did not observe any of these provisions of the I.D. Act nor the provisions of the Sastry Award, the termination of the services of the workman after taking work from him for a long period was illegal, unjust and mala fide. I therefore answer the reference as under :—

1. That the action of the management of State Bank of India in terminating the services of Shri Vinod Kumar Chouksey w.e.f. 1-1-86 and not considering him for further employment while recruiting fresh hands under S. 25H of the I.D. Act is justified. He is not entitled to any relief.
- (2) That the action of the management of State Bank of India in terminating the services of Shri Nirmal Kumar Patel w.e.f. 2-2-1986 is illegal and unjustified. He is entitled to be reinstated from 2-2-1986 as Messenger and full back wages with continuity of service and consequential benefits. However, he will be entitled to minimum salary of newly appointed Messenger as back wages. No order as to costs.

नई दिल्ली, 25 मई, 1989

का० आ० 1330.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ बीकानेर एण्ड जयपुर के प्रबंधकंत्र के संबंध नियोजकों और उनके कम्बारों के द्वीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राजस्थान, जयपुर के पंचपट को प्रवागित करती है, जो केन्द्रीय सरकार को 17 मई, 1989 को प्राप्त हुआ था।

S.O. 1330.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Rajasthan, Jaipur as shown in the annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Bikaner and Jaipur and their workmen, which was received by the Central Government on the 17th May, 1989.

## परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर कैम्प उदयपुर  
प्रकरण क्रमांक सी आई टी 8/85

मध्य: सेकेटी, राजस्थान बैंक एम्प्लाईज यूनियन,  
मार्फत बैंक आफ राजस्थान लिमिटेड,  
अधिकारी बाजार उदयपुर (राजस्थान)

एवं

महाप्रबन्धक,  
स्टेट बैंक आफ बीकानेर एण्ड जयपुर  
प्रधान कार्यालय तिलक मार्ग  
जयपुर (राजस्थान)  
रेफरेंस अन्तर्गत धारा 10(1) (ग) औद्योगिक विवाद  
अधिनियम, 1947

उपस्थित:  
श्री एस के भारद्वाज ला आफिसर स्टेट बैंक आफ  
बीकानेर एण्ड जयपुर उपस्थित  
श्री बी एस भण्डारी श्रमिक प्रार्थी स्वयं उपस्थित

अवार्ड

दिनांक 23 मार्च, 1989

भारत सरकार डेक अधिकारी ने उनके आदेश संब्धा एल 12012/14/84-डी (अ) 11-ए के द्वारा निम्न विवाद इस न्यायाधिकरण को अन्तर्गत धारा 10(1)(ग) औद्योगिक विवाद अधिनियम, 1947 जिसे तत्पश्चात अधिनियम, लिखा जाएगा वास्ते अधिनिर्णय प्रस्तुत किया है।

विवाद

“क्या स्टेट बैंक आफ बीकानेर एण्ड जयपुर के प्रबंधकंत्र की श्री बी एस भण्डारी को 5-7-1981 से हैंड कल्के के रूप में पदनामित न करने की कार्याही न्यायोचित है? यदि नहीं तो संबंधित कर्मकार किस अनुतोष का हकदार है?”

उक्त निर्देशन इस न्यायाधिकरण में दिनांक 7-2-85 को प्राप्त हुआ जिसे इस न्यायाधिकरण में पंजीकृत किया जाकर उद्यपत्रकारान को नोटिस भेजे गये। राजस्थान बैंक एम्प्लाईज यूनियन द्वारा बैंक आफ राजस्थान लिमिटेड, व्लाक टावर उदयपुर की ओर से स्टेटमेन्ट आफ क्लेम श्री रणजीत जैन सचिव ने इस आशय का प्रस्तुत किया कि श्री भण्डारी का पद परिवर्तन दिनांक 4-7-78 के पद अनुसार हो गया था फिर भी स्थानीय शाखा व्यवस्थापक ने उन्हें अपने सहायक महा प्रबंधक को अपने पद संब्धा ए जी एम/2/34/ए 1/15488 दिनांक 30-8-78 के संदर्भ को लेकर पद लिखा कि श्री एत एस राठोड जैनका पद परिवर्तन पूर्व में किया जा चुका है ऐसी स्थिति में उसे श्री भण्डारी का पद परिवर्तन

कर सूचित करावें ऐसी परिस्थिति एक हास्यस्पद थी जब कि वे स्वयं भी उनके उपरोक्त पद से भी यह स्वीकार कर रहे हैं कि श्री भण्डारी का पद परिवर्तन हो नुक्का है। यह कि दिनांक 4-7-78 के तहत जब बैंक ने भी भण्डारी का पद परिवर्तन कर दिया और बैंक नियमानुसार उन्हें श्री एकार्थी के कार्यकारी पद पर कार्य के भर्ते हेतु तीन वर्ष के लिये प्रतिवर्धित भी कर दिया और जिसकी अवधि 3-7-81 को समाप्त हो जाती है।

आगे यह आरोप लगाया कि श्री भण्डारी को उनकी वरिष्ठता के तहत दिनांक 21-9-77 को ही टेलर का कार्य दिया जा चुका है तो उन्हें पूर्व पद परिवर्तन की आवश्यकता नहीं थी। अंत में यह प्रार्थना की कि श्री भण्डारी को दिनांक 5-7-81 से हैंड कल्के के पद पर पदोन्त एवं नियुक्त किया जावे।

उक्त स्टेट बैंक की ओर से प्रतिवाद निम्न आधार पर किया गया जिसमें ऐतराज लिया गया कि प्रार्थी श्री भण्डारी का स्टेटमेंट आफ क्लेम तथ्यों एवं विधि के अनुसार चलने योग्य नहीं है उसे सरसरीतोर पर खारिज किया जावे। प्रार्थी श्री भण्डारी बैंक से कोई राशि प्राप्त करने का अधिकारी नहीं है। अब चूंकि पदकारान के मध्य समझौता हो गया है इसलिए बैंक की ओर से पेश किया गया उत्तरक्वेम विस्तीर्णतोर पर पुनः यहां लिखा जाना आवश्यक नहीं है।

आज जब कि यह पदवालीं प्रार्थना पद के जवाब और सुनवाई के लिये नीति की गई थी। पदकारान की ओर से उदयपुर कैम्प पर समझौता पेश किया। बैंक की ओर से श्री एस के भारद्वाज ला आफिसर ने अपना अधिकार पद पेश किया जिस पर प्रार्थी श्रमिक श्री बी एस भण्डारी ने कोई ऐतराज न होना जाहिर किया। श्री बी एस भण्डारी स्वयं उपस्थित आया। श्री एस के भारद्वाज वरिष्ठ अधिकारी बैंक व श्री बी एस भण्डारी ने सचिव, राजस्थान बैंक एम्प्लाईज यूनियन द्वारा दी चूंकि आफ राजस्थान लिमिटेड, व्लाक टावर, उदयपुर की ओर से समझौता पेश किया। और जाहिर किया कि यह समझौता स्टेट बैंक आफ बीकानेर एण्ड जयपुर के अधिकृत अधिकारी एवं यूनियन के सचिव के मध्य स्वैच्छा से हुआ है। समझौता को पढ़कर सुनाया व समझाया गया श्री बी एस भण्डारी ने यह स्वीकार किया कि यह समझौता बिना किसी डर, भय, लालच या दबाव के सम्बन्ध में हुआ है उसे व्यक्तिगत रूप से यह मान्य है और यूनियन ने यह समझौता भी स्वैच्छा से बैंक के साथ किया है। चूंकि समझौता रेफरेंस की परिवर्तन में है और यूनियन ने बैंक के साथ अपनी इच्छा से किया है ऐसी सूख में समझौता को तस्वीक किया जाता है। यह समझौता अवार्ड का अंग रहेगा।

अवार्ड

समझौता के आधार पर अवार्ड यूनियन के पक्ष में निम्न प्रकार से पारित किया जाता है—

6. यह कि प्रार्थी बैंक ने यह स्वीकार कर लिया है कि श्री भेद सिंह भण्डारी को उदयपुर में हैंड कल्के पद के लिये नियुक्त पद इस समझौता के लागू होने की तिथि से दे दिया जावेगा।

2. यह कि श्री भेद सिंह भण्डारी पुत्र श्री के एम भण्डारी जाति हिन्दू निवासी उदयपुर को इस संबंध में पिछला भत्ता एवं वेतन अन्य कोई भी संभावित लाभ प्राप्त करने का अधिकारी नहीं होवेगा। तथा ना ही इस संबंध में वह भविष्य में कोई विवाद उठायेगा तथा सचिव श्री रणजीत लाल जैन भी इस सौदार्थी समझौते से पूर्णतया सहमत है।

उक्त पंचाट की प्रतिलिपि केन्द्रीय सरकार को वास्ते प्रकानशार्थ नियमानुसार भेजी जावे।

पंचाट आज दिनांक 23-3-89 को कैम्प उदयपुर पर जारी किया गया।

प्रताप सिंह अश्व, पीटासीन, अधिकारी  
[सं० एल-12012/14/84-डी I (ए) डी० III (ए)]

का० आ० 1331 श्रीद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ पटियाला के प्रबंधतां के संबंध नियोजकों और उनके कम्कारों के बीच, अनुबंध में निर्विष्ट श्रीद्योगिक विवाद में केन्द्रीय सरकार श्रीद्योगिक अधिकरण, चंडीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16 मई, 1989 को प्राप्त हुआ था।

S.O. 1331.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Patiala and their workmen, which was received by the Central Government on the 16th May, 1989.

#### ANNEXURE

BEFORE SHRI M. S. NAGRA, PRESIDING OFFICER  
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT, CHANDIGARH

Case No. I. D. 4386.

#### PARTIES :

Employers in relation to the management of State Bank of Patiala.

AND

Their workman : Ram Parkash.

#### APPEARANCES :

For the workman : Shri T. C. Sharma.

For the management : Shri P. S. Arora.

INDUSTRY : Banking

STATE : Punjab

#### AWARD

Dated : 20th April, 1989

On a dispute raised by Ram Parkash against State Bank of Patiala, Central Govt. had vide No. L-12012/285/85-D. II(A) dated 16th June, 1986 referred the following dispute to this Tribunal :

"Whether the action of the management of State Bank of Patiala in refusing promotion as officer in junior management grade scale I to Shri Ram Parkash, Head Cashier Jalal Branch is justified when no consent was obtained from him with reference to Bank Memo No. Per19/1984 dated 25-6-1984 ? If not, to what relief is the workman entitled and from what date ?"

1. Case of the petitioner as set out in the statement of claim is that he has been working as Head Cashier category E and presently posted at Moonak Branch of the Bank. It is mentioned that management has been offering chances of promotion to the workmen staff in the clerical and cash department including the Head Cashiers as officer Scale-I (Junior management Scale) on the basis of written test and interview as per promotion policy based upon joint discussions/agreements. It is pleaded that management had denied the opportunity to the present petitioner inspite of repeated representations made to the authorities.

In its answer filed management took plea that under the promotion policy laid down by the Bank only those employees are called for written test/interview who give their unconditional consent for promotion in response to the memos issued by the Bank. On merits it is pleaded that in the year 1984 the consent of employees eligible for promotion were invited by the Bank vide Memo No. Per19/1984 dated 25-6-1984 and the petitioner who was then posted at Banks Jalal Branch and was eligible, had not given his consent and rendered himself as non-contender. It is mentioned that workman who had put in 37 years service in the Bank is fully aware about the system/procedure of giving consent

and refusal for promotion in as much as he had earlier availed 4 chances of promotion under group 'A' by giving written consent in the year 1968, 1969, 1970 and 1972. It is stated further that in the year 1985 the petitioner did give his consent letter for appearing in interview for promotion in response to Bank Memo No. Per19/1985 dated 18th January, 1985 but in view of imposition of penalty on him reducing his basic pay from 1660 to 1470 per month for the irregularity committed by him, he was in eligible for promotion and as such was not called for interview for promotions under Group 'D' as per rules.

2. Both the parties were afforded opportunity to lead evidence and they availed the same. Shri Ram Parkash workman produced affidavit Ex. W1 reiterating allegations made in the statement of claim. He has solemnly affirmed that though the management had issued circular No. Per19/1984 dated 25-6-1984 to the branches for promotion but it did not offer him any chance of promotion and in this respect he had submitted representation dated 25-8-1984 to the Branch Manager Jalal which was forwarded to Zonal Office vide despatch No. 514 dated 1-9-1984. He has deposed that promotion offer deliberately was not given to him as the management was not well disposed towards him. He tendered copy Ex. W2 of letter dated 29-8-1984 sent by him to Regional Office Bhatinda asking as to why he has not been called for interview in 'D' Grade.

In rebuttal the management tendered affidavit Ex. M1 of S. C. Mittal the then Branch Manager Jalal Branch. He has solemnly affirmed that on receipt of circular No. Per19/1984 dated 25-6-1984 at Jalal Branch, he had shown the same to Ram Parkash petitioner and got its receipt acknowledged from Ram Parkash on the circular itself. He deposed further that Ram Parkash did not give his consent or refusal within stipulated date i.e. 15-7-1984. During his cross-examination he admitted that the circular on which acknowledgement of Ram Parkash was obtained must be in the Jalal Branch of the Bank.

Admittedly in the year 1984 the workman who was then posted at Jalal Branch of the Bank was eligible for being considered for promotion. Case of the management is that workman rendered himself as non-contender by not giving his consent for promotion. Workmen contends that he was never offered any chance to give his consent. Evidence on the file shows that on 29-8-1984 workman had sent a representation to the Regional Manager asking for reasons as to why he has not been called for the interview. The sole question rests on the controversy as to whether the circular No. Per19/1984 dated 25-6-1984 issued by the Head Office asking the branches to obtain and forward the consent/refusal letter from the eligible employees to head office not later than 15-7-1984 for considering for promotion as officer in junior management grade scale I in group 'D' was circulated to Ram Parkash or not ? The then Branch manager Shri S. C. Mittal appearing for the management has testified that he had obtained signatures of Ram Parkash on the copy of the circular received in the branch in token of its acknowledgement. The said document containing signatures of Ram Parkash acknowledging receipt of the circular is admittedly lying with the Jalal Branch of the Bank where Ram Parkash is no more posted. This is the only piece document by the management it can be well presumed that give his consent. The said circular allegedly containing signatures of Ram Parkash in token of its acknowledgement was the best piece of evidence to clinch the issue and the same has been withheld by the Bank management for the reasons best known to it. In view of the non-production of the said document by the management it can be well presumed that no consent was obtained from Ram Parkash with reference to Bank memo No. Per19/1984 dated 25-6-1984. Act of the management of State Bank of Patiala in refusing to consider Ram Parkash for promotion as officer in junior management grade Scale I in the year 1984 when Ram Parkash did not suffer from many ground of ineligibility is not justified. The petitioner was within its right to be considered for the said promotion w.e.f. the date when eligible employees were considered and promoted. Reference is, therefore, returned with the findings that action of the management of State Bank of Patiala in refusing to consider Ram Parkash Head Cashier Jalal Branch for promotion as officer in junior management grade scale I in the year 1984

was not justified and management shall consider him for promotion on the basis of Bank's Memo No. Per/19/1984 dated 25-6-1984 and in case of his promotion he shall be entitled to all benefits of higher pay scale: dearness allowance and other allowance etc. from the date person junior to him had been promoted to officer in junior management grade scale I group 'D' in the year 1984.

M. S. NAGRA, Presiding Officer  
[No. L-12012/285/D. II(A)/D. III(A)]

नई दिल्ली, २६ मई, १९८०

१०० अर० १३३२ औषधिगिरि विद्याव यशिनिम, १९४८  
 (१९४७ का ११) की शारीर १७ टो अवृत्तरण में, ३२८ बीम आरू  
 मोरोड़ के प्रत्यंगत्र के यज्ञद्व नियोजितो और उनके कर्मजागे के दीज,  
 शत्रुघ्न में निविट औषधिगिरि विद्याव में केंद्रीय यशकर औषधिगिरि औष-  
 धारण, जयपुर के पंचाट की प्रकाशित करती है, जो केंद्रीय यशकर की  
 १७ घर्त, १९४९ को प्राप्त हुया था।

New Delhi, the 26th May, 1989

S.O. 1332.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Industrial Tribunal, Jaipur as shown in the Annexure in the industrial dispute between the employers in relation to the management of State Bank of Saurashtra and their workmen, which was received by the Central Government on the 17th May, 1989.

ପିତ୍ତୁ

श्रीद्वौगिरु न्यायाधिकरण, जयपुर

माननीय च्यापाक्षीम धी प्रभाप मित यादव, आर.एच.जे एम.  
केम नं. सीप्राईटी. 44/88

मध्य

श्री आर. के. डीन, मकान नं 4347 नाथमल जी का चौक, प्रसाद  
संडी ज़ीहरी शाहार, जगपुर।

੧੪੯

प्रवाल्येक स्टेट वैक आफ मौराप्पु, गत्रसद्दा भिन्नेगा हे पास, अनाज मंडी, जीह्वने आजार, जयपुर।

रेकॉर्ड अन्वयन धारा 10(1)(क) आंतरिक विवाद प्रधिनियम,  
1947

उपस्थिति

प्रार्थी की ओर से: कोई उपस्थित नहीं है।

श्रीप्रार्थी की ओर से श्री एसी उराध्याप

ବିଜ୍ଞାନ ଅଭିଯାନ । ୧୧-୩-୮୭

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भारत सरकार के श्रम मंत्रालय के ईस्क अधिकारी ने उनकी अधिसूचना सं. पाल. 12012 647 87/शि/2(ग) विनांक 14-7-48 निम्न विवाद अंतर्गत धारा 10(1)(घ) श्रीधोपिक विवाद अधिनियम 1917 जिसे नवज्ञान अधिनियम का जयंगा है न्यायाधिकरण को बास्ते अधिनियम करने हेतु प्रस्तुत किया है—

“क्या स्टेट बैंक आक मौगाड़ जयपुर के प्रब्रह्मनन्द की श्री शार. के जैत को सेवायें नमान करने नथा नहीं भर्ती करने समय ग्रीष्मेविक विवाद अधिनियम की धारा 25-ज के अधीन उसके नियोजन पर

पिंगार न करने की कार्यपालिका, गांधीजी है? यदि नहीं तो मैं पालिका किए जाना चाहता हूँ।"

२ उपरोक्त नियोजन इस न्यायाधिकरण में दिनांक २० जुलाई ८८ को प्राप्त होने पर इस प्रतीकृत किया गया था और उसके पश्चात कागजों तारिख जारी घोषने के आदेश दिये गये। आगामी तारिख पेश दिनांक २१-८-८८ को कोई प्रत्यक्षार उपस्थित न होने के कारण उहाँ नांदिग जारी करने का आदेश दिया गया था और नार्टिम इस न्यायाधिकरण में जारी भी किया गया। तारिखन्तु आगामी तारीख पेश दिनांक २५-११-८८ को प्रार्थी की श्राव थे कोई उपस्थित नहीं आया न ही प्रार्थी अभिक स्वयं उपस्थित आया। किंतु नियोजक संघाल के प्रधिवस्ता थी एक के उपाध्याय उपस्थित था थे। इन्द्रजीत दिनांक ३०-१-८९ के तिथि तारीख घटनी गई उसके पांच बाल्ल भी आज तिथि नारीख १४-३-८९ को प्रार्थी अभिक उपस्थित नहीं आया था और व्यार्थी वैक को श्राव में उनके अधिकारिता थी ए.री. उपाध्याय उपस्थित आये जिन्होंने एक प्रार्थनापत्र हम आगय का प्रस्तुत किया कि प्रार्थी भी आर.के. जैन प्रारम्भ से उपस्थित नहीं आ रहे हैं और उन्होंने अपना कलेम भी प्रस्तुत नहीं किया है। योग्य अधिकारिता विपरीत हम न्यायाधिकरण का ध्यान इस श्राव भी आकर्षित किया कि केंद्रीय सरकार ने तो रैकर्डें इस न्यायाधिकरण का भेजा गया है उसी में प्रार्थी राजनुसार का भी यह निर्देश किया गया था कि वह फैकर्म की प्रतिक्रिया के १५ दिनों के अन्दर अधिकरण के नगद अपना कलेम प्रतिवेदी महिला प्रस्तुत करेगा श्रावी प्रतिवेदी को कलेम पेश करने का श्रोत दस्तावेज की प्रतिलिपि भेजेगा। प्रस्तुति वह ब्राह्मण कि फैकर्म थी कि प्रार्थी स्टेटमेंट आफ कलेम तोड़ा था तो से रखी नहीं रखा था एवं यह अनुमान तिकाका जाये कि पक्षागत के मध्य कोई विवाद नहीं रख रखा गया है। इस पर पक्षागती का प्रश्नोत्तर किया निर्देशन (फैकर्म) को पूछ पाए जाने गए, ३ पर पंजीकृत दाक में प्रार्थी आर.के. जैन की मकान स. १३४७ नामकान जी का खोक, आगाज मंडी जौहरी वाजार, जयपुर के पास पर रैकर्डें की प्रतिलिपि भेजी जाना अंदित है और हमसे यह भी निर्देश किया गया है कि श्रीयोगिक विवाद (केंद्रीय) नियम १९५७ के नियम १०(ब) के अधीन की गई अवस्था के अन्तरार विवाद उठाने वाला पक्ष को मनाह दी जाती है कि दाकों का विवरण जो संभव बस्तावेजो महिला पूरा हो, आवलम्बन (शिलायन) तथा गवाही की मुखी डूँग निर्देशन प्राप्ति की प्रतिक्रिया के १५ दिनों के अन्दर अधिकरण के पास दाप्रण करेगा। और ऐसे विवरणों को एक प्रति दृश्य विवाद में अन्तराक्ष प्रत्येक विवरण पक्षागत को भी भेजेगा। इस से स्पष्ट है कि केंद्रीय सरकार दृष्टि मंत्रालय के देस्क अधिकारी ने ऐसे प्रार्थित उन्हें दे दिये थे कि वे रैकर्म की प्राप्ति के १५ दिवस के अन्दर अन्दर दस्तावेजो सहित प्राप्ता स्टेटमेंट आफ कलेम और गवाही की मुखी प्रस्तुत करेगा। मगर हवा निर्देशन प्रार्थित के बाबजूद भी प्रार्थी इस न्यायाधिकरण में इसे लंबे समय तक उपस्थित नहीं आया। अहंकारन इस न्यायाधिकरण द्वारा भी प्रार्थी अभिक को स्टेटमेंट आफ कलेम प्रस्तुत करने के लिए नोटिम दिया गया थो २७-१०-८८ को मिल जाना प्रधीन होता है और उसके बाबजूद भी प्रार्थी अभिक उपस्थित नहीं आया और स्टेटमेंट आफ कलेम प्रस्तुत नहीं किया। इस कदर अव्वर दिये जाने के पश्चात भी प्रार्थी श्रो आर.के. जैन उपस्थित नहीं आया। इससे ऐसा प्रधीन होता है कि वह इस फैकर्म को चलाने में लड़ी नहीं रखता है या इस विवाद के संबंध में कोई विवाद नहीं अवाई पार्श्विय किया जाना है। पंचाट की प्रतिलिपि केंद्रीय सरकार को अन्तर्गत धारा १७(१) अधिनियम वाले प्राप्तानार्थ भेजी जावे।

प्रनाप सिंह यादव, न्यायार्थीण

[३० पान्डा १२०१२/६४७/८७-८८-II(प)/८८-III(प)]

१०० श्री घरन, उपक अधिकारी

नई दिल्ली, 19 मई, 1989

का. आ. 1333 :—आंतर्राष्ट्रीय विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार तुंगभद्रा बोर्ड, बिलैरी के प्रबन्धसंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आंतर्राष्ट्रीय विवाद में केन्द्रीय सरकार आंतर्राष्ट्रीय अधिकरण, बैगलीर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-5-89 प्राप्त हुआ था।

New Delhi, the 19th May, 1989

S.O. 1333.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Tungabhadra Board, Bellary and their workmen, which was received by the Central Government on the 12-5-89.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT BANGALORE

Dated 27th April 1989

Central Reference No. 27/88

#### I PARTY

Shri Hussain Khan,  
Shri Chennappa  
Shri Jaffar & Shri Venkatesh  
R/by the General Secretary  
Thungabhadra Board Factory  
Workers and Civil Employees  
Union Thungabhadra Dam  
P.O. Bellary Dist.  
Karnataka State

#### II PARTY

Vs. The Secretary  
Thungabhadra Board  
T.B. Dam, Bellary Dist  
Karnataka State.

#### APPEARANCES :

For the I Party Shri S. S. Malebennur,—Advocate.

For the II Party Shri A. K. Bat—Advocate.

#### AWARD

By exercising its powers under Section 10(1)(d) of the I.D. Act, the Government of India, Ministry of Labour made the present reference on the following point of dispute by order No. L-42011/35/87-D.II(B) dated 13-6-1988.

#### POINT OF REFERENCE

“Whether the action of the management of Tungabhadra Board T.B. Dam, Bellary Distt. in retrenching S/Shri Hussain Khan, Chennappa, Jaffar and Venkatesh, casual labourers is justified ? If not, to what relief the workmen are entitled to ?”

2. The I party Union has then filed its claim statement and inter alia, it is contended as follows.

The persons shown below, who were working in the II part have been stopped from work from the date shown below :

Sl. No.	Name	Date from which work started	Date which stopped from work
(1)	Jaffar Sahab S/o Shaik Mahboob	Oct. 1985	1-12-86
(2)	Chennappa S/o Marianayagan	Apr. 1985	1-12-86
(3)	K. Venkatesh S/o Durgappa	Oct. 1985	1-12-86
(4)	Hussain Khan S/o Petha Syed Khan	June 1984	Nov. 1986

3. No notice or no retrenchment compensation was paid to them. In the memorandum of settlement arrived at on 7-3-1987 before the Assistant Labour Commissioner (Central), Bellary, there was an agreement that all the four should be admitted to work and ex-gratia equivalent to two months wages should be paid. It was also agreed that on or before 30-4-1987 a seniority list should be prepared, so that they should be absorbed. Apprehending retrenchment, an industrial dispute was raised. The Assistant Labour Commissioner issued notice to the parties and fixed a conciliation meeting on 13-4-1987. From 13-4-1987, these four workmen were again stopped from work, on the ground that the work for which they were engaged had been completed. The II party contended that they were casual workers. They contended that the following daily wagers who were appointed subsequent to them have been still continued in service.

	Date of Appointment	Where working
(1) Smt. Rani	1-10-1984	Garden Works, T.B. Dam.
(2) Smt. Somalamma	4-1-1985	-do-
(3) Sri Lal Bhadur	2-4-1985	-do-
(4) Smt. Varamahalaxmi	1-4-1985	Camp Works T.B. Dam.
(5) Sri Balasubramani	4-4-1985	Garden Works, T. B. Dam
(6) Sri Naca Bhadur	8-8-1985	Garden Section, T. B. Dam.
(7) Sri Lakshmanasir Singh	1-10-1985	-do-
(8) Sri Pram Bhadur	1-10-1985	-do-

The management has not followed the provisions of Section 25-F, 25-G etc. of the I.D. Act. They have been compelled to incur debts for their maintenance. Hence, it is prayed that an order may be passed for their reinstatement and consequential benefits.

4. The II party has filed its counter statement and inter alia, it is contended as follows.

The Tungabhadra Board was constituted by the President of India under section 66(4) of the Andhra Act of 1953. Its functions include maintenance of T.B. Reservoir, canal systems, horticulture and to carry on incidental functions. Its employees are drawn from the Government of Karnataka and Andhra Pradesh. The casual workers are employed depending upon the exigencies of the work in maintenance of canal, dam etc. The board is a limb of the Government. The functions of the board are the sovereign functions of the State. The persons engaged by the Board are Government servants, engaged for the performance of the sovereign functions of the State. The Government of India has made the matter clear in their memoranda as shown below.

1. D.W.I 46(6)(b) dated 28-11-1961 Ministry of Irrigation and Power (copy enclosed).
2. O.M. No. 16-1-1987 P.II dated 21-4-1987 of the Ministry of Water Resources (Copy enclosed).

The I party cannot maintain the dispute. They cannot be called as industrial workers. The reference made by the Government is not valid. There are different categories of persons working in the Board shown as below :

- (1) Regular establishment drawn from both the states,
- (2) Workcharged Establishment on monthly scales of pay,
- (3) Daily rated workers engaged for maintenance work and who are regularised in the vacancies arising in item No. 2.
- (4) Daily rated workers including Gurkha Watchman, engaged purely for casual work.

These four persons were unskilled casual workers. Their services were dispensed with with effect from 13-4-1987, after the work for which they were engaged was completed. They did not have any continuous service. However, as a special case it was agreed to pay some ex gratia of two months pay and it was given on compassionate grounds. The Memorandum of Settlement dated 7-3-1987, in that connection makes the matter more clear. The persons employed on daily wages work on the canal of 250 kms. at different places. They are engaged by different officers and expenditure is debited to different heads. Their case has been already settled by the Settlement dated 7-3-1987. It is not correct to compare these persons with those employed on N.M.R. basis. Since the dispute was settled on 7-3-87, the matter may be treated as closed. No junior to them has been kept in service. The persons engaged on N.M.R.s are from different categories and they were employed for different items of work as shown below.

1. Lal Bahadur	2-4-1985	Gurkha Watch-
2. Naca Bahadur	8-8-1985	man engaged for
3. Lakshman Singh	1-10-1985	night watch and
4. Pran Bahadur	1-10-1985	ward.
5. Bala Subramani	4-4-1986	Skilled worker (Matriculate).
6. Varamahalakshmi	1-4-1985	No such worker.
7. Smt. Rani	1-10-84	or
8. Smt. Somalamma	4-11-1985	Woman Mazdoors

5. In view of the aforesaid pleadings a preliminary issue was raised as shown below :

"Whether the dispute is not an industrial dispute and that there is no proper reference and that it is not maintainable as contended in para 1 of the counter statement?"

6. It was taken up as a preliminary issue.

7. The parties submitted their written arguments on the same.

8. In my considered order dated 11-3-1989, it has been held that the reference is maintainable and that this Tribunal has the jurisdiction to entertain the same.

9. The matter was then called for hearing at Bellary camp on 21-4-1989.

10. On 21-4-1989, the II party and their advocate remained absent though waited for till 2.30 p.m. The I party was then called upon to adduce evidence. Five witnesses have been examined for the I party and Exs. W-1 to W-9 have been got marked.

11. The learned counsel for the I party has been heard.

12. My finding on the point of reference is as follows

It is not a case of retrenchment, but it is a case of non-compliance with the terms of the settlement, regarding which the I party workmen are entitled to the relief as shown below:

#### REASONS

13. In the claim statement, the workmen have contended that they had been working from June 1984 or October 1985 and that in November 1986 or from 1-12-1986 they have been stopped from work and that the action of the management amounted to retrenchment. WW-1 the Secretary of the I party union and all the four workmen viz., WW-2 to WW-5 have stated that they had put in more than 240 days of service in the period of 12 months next preceding the date of stoppage of work. The statements given by the workmen to the Union at Exs. W-1 to W-4 support their statements. Exs. W-5 to W-8 are the representations given by the workmen to the Secretary of the Union.

14. Exs. W-1 to W-8, indeed support the evidence of WW-1 to WW-5. The question that arises for consideration is not whether it is a case of retrenchment, because the workmen have themselves admitted in the claim statement in

para 4 that there was a settlement on 7-3-87. It is also an admitted fact that after 7-3-87, they had been given work and, in fact, they did work till 13-4-1987. The question therefore is whether the II party was justified in not abiding by the terms of settlement dated 7-3-1987, as per which it had undertaken to give them work. The failure report at Ex. W-9 shows that as per the case of the workmen, the Junior Engineer had asked them not to come for work, unless they change their name, but that the workmen refused to change their names and thus they have been stopped from work. Ex. W-9 further shows that discussions were also held on 13-4-87 and the matter continued till 5-5-87 and that the management had contended that these four casual workers had discontinued with effect from 13-4-1987 and not from 1-4-87, that the concerned matters had been settled by the settlement dated 7-3-1987 and therefore there was no dispute. From the failure report Ex. W-9, it is obvious that the management had absolutely no objection to abide by the terms and conditions of the settlement dated 7-3-87. Similarly, there is no dispute on the point that the II party has admitted to give them work under the settlement dated 7-3-1987. Since, it is not a case of retrenchment, I find that the II party is bound by the settlement dated 7-3-87 and it shall have to provide work to the workmen. The workmen cannot claim any retrenchment compensation or any back wages, since they are also bound by the settlement dated 7-3-87. Except for the interested testimony of the workmen, there is no independent evidence to prove that in April 1987 the concerned junior engineer had asked them not to come for work unless they change their names. There is no convincing evidence produced by the workmen that the management had stopped them from work unless they changed their names. Under the aid of circumstances, I am of the view that it would suffice if an award is passed, directing the management to provide work to these four persons within one month from the date on which this award comes into force, as per the terms and conditions of the Settlement dated 7-3-1987.

15. In my view, the feelings and relations between the parties are likely to get strained, if any order for costs or any other order is passed. I, therefore, do not propose to pass any order in that connection.

16. In the result, an award is passed to the effect that it is not a case of retrenchment but that it is a case of non-compliance of the settlement dated 7-3-1987. The II party is hereby directed to provide work to all the four workmen named above within one month from the date on which this award comes into force.

(Dictated to the Stenographer, taken down by her, pol typed and corrected by me)

B. N. LALGE, Presiding Officer  
[No. L-42011/35/87 D 11(1)]

नई दिल्ली 23 मई 1989

का आ. 1934--और्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार ग. इन्ड्रिय मराठा परिषद नेत्रे ले प्रवधनन्त्र में गम्भीर तात्पर कर्मकारी के विचार, ग्रन्तियां में निविष्ट और्योगिक विवाद में और्योगिक शत्रुकरण, जनपुरा के पंचायत को प्रतिष्ठित करनी है, जो इन्ड्रिय मराठा की 16-5-89 प्रतानुसारा।

New Delhi, the 23rd May, 1989

S.O. 1334.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Udaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Western Railways and their workmen, which was received by the Central Government on the 16-5-1989.

परिप्रेक्ष्य

केन्द्रीय औषधिका व्यायाधिकरण, जयपुर  
केन्द्र नं. सी.आई.टी. 80/84

সংস্কৃত

पश्चिमी रेसवे कर्मचारी परिषद भर्तमेर।

ପାତ୍ରମ୍

1. जनरल्स मैनेजर परिवर्ती रेलवे, वर्क गेट बम्पर्ट।
2. डिप्टी चीफ मैनेजिंग इम्जीनियर (कैरिज) आरखाना परिवर्ती रेलवे।
3. उप. भूत्य कार्मिक अधिकारी (का) प्रक्रमेर अपर म. या ई. (लो) अजमेर।

रेफरेन्स :— प्रनर्गत धारा १० (१) श्री औद्योगिक विवाद प्रधि-  
नियम १९४२.

उपस्थित :--

1. श्री प्रार्थ. श्री. नारायण प्रार्थी यन्त्रियन की ओर  
में उपस्थित ।
2. श्री बी. एम. मायुर अधिकारी परिवर्ती रेलवे  
ग्रजमेर उपस्थित ।
3. 29-3-8 दिनांक अवार्ड

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भारत सरकार के श्रम और पूर्ववर्षीय मंत्रालय नई दिल्ली के ईस्ट प्रशिकारी ने उनके प्रावेश संख्या -एन-41012 (8)/84 डी II (बी) दिनांक 31-10-84 निम्न विवाद अनुर्गत धारा 10 (1) (प) औरो-गिक विवाद अधिनियम, 1947, जिसे महाराष्ट्रात अधिनियम विवा-जायेगा वास्ते अधिनियमार्थ हम न्यायाधिकरण को प्रेषित किया।

बाद प्राप्ति निर्देशन इसे हस्त व्यापारिकरण में पंजीकृत किया गया उभय पक्षकारान को नोटिस अरिये पंजीकृत डाक भेजे गये। परिचमी रेलवे कर्मचारी परिषद जिसे नतवश्वाल परिषद लिखा जायेगा कि संयुक्त मंत्रीभण्डल अधिसेर ने इस विवाद में स्टेट मैन्ट शांक क्लेम मिस्ट्र प्रकार से प्रस्तुत किया।

यह है कि परिवर्त ने अधिनियम को धारा 22 से अन्तर्गत प्राप्तार्थी अधिकारीगण को हड्डाल का नोटिस दिया था जिसके पश्चात लैन्ड्रीय सहायक श्रम आयुक्त प्रभारी, के संकेत समझौता आर्ती प्रारम्भ हुई जो असफल रही उसके पश्चात यह विवाद कैन्ट्रीय श्रम मंत्रालय द्वारा इस व्याधिकरण को भेजा गया। आगे अप्रत्यक्ष किया थी कि गोरखन मिस्ट्री पुत्र श्री स्वर्णीर्थ बंडी लाल टिकट नं. 263 को अनुक्रममा दे भाग्यालय पर लालसी के पद पर 8-1-73 से राणा प्रगाथ नगर उदयपुर, भें नियक्त किया गया।

यह कि श्री गोरखन मिह मर्ह सन् 1974 ई हृताल के दौरान वेकायरत है यह कि सन् 1974 की हृताल में वकावार रहने वाले कारण 3/शपथ की विधेय प्रतिक्रिया दी गई जो एक वर्ष तक मिलनी रही। रेलवे प्रशासन ने एक वर्ष पश्चात ये प्रतिक्रिया बद्ध कर दी। आगे व्यक्ति विद्या उक्त मूल्य यात्रिक प्रभियंता कैरिज के पद को आधार मानकर हेड चार्च भैत उदयपुर ने अपने पद संख्या-7-1/प्रार-2/एक दिनांक 7-10-74 के अनुमार श्री पुलोत्तम लाल पुत्र श्री शोण और श्री रामेश जान, पुत्र जान अपना नाम, अस्तुत रहमान ११ श्री उस्मान, एवम् श्री हेतेरी गोलामन पुत्र श्री हरीश को 7-10-74 को लायल कोटी के आधार पर अलादी के पद पर नियुक्त किया। परन्तु रेलवे प्रशासन ने प्रार्थी गोरखन मिह के बरिठ होते हुए भी उक्त चारों व्यक्तियों को सेनी रेलवे पद पर पदोन्नत कर विद्या प्रार्थी को अनुकम्मा के आधार पर नियुक्ती होने के कारण भर्ती है। जिथि मे श्री

भाई भाना भाना है जाह प्रादेना की कि पार्थी गोपन मिह गो लोका  
कोटा भर्ती होने वालों में वरिल भाना जाय एवम् वरिल होने के  
नामे भर्ती काम एवम् सुधियाएं विलार्या जावे।

पश्चिमी भेदवे जि वरिष्ठ कामिक अधिकारी भारतवाना अपनेर, ने निम्न विविध स्टेट्सेन्ट आफ भेदम का जयद प्रस्तुत किया। यह स्थीकार किया कि पश्चिमी भेदवे कर्मचारी परिषद एक गंजीहून मंस्था है स्टेट्सेन्ट आफ भेदम चारण मध्या 2 स्थीकार करते ही यह अधिकार किया कि उको पिता की मर्यादे उत्तराना प्रत्यक्षमा ऐ आधार पर दिनांक 8-1-73 को भास्याहू रूप से नियुक्त विद्या गया। नवाचान 8-7-73 को उसको देखेरे स्टेट्स ना इर्जा दिया गया था। नवाचान प्रार्थी को खालामी से पहर पर दिनांक 29-1-79 से नियम कर दिया गया। यागे यह अधिकार किया कि प्रार्थी ने भन् 1971 की हड्डानाल में भव्यताद्वयूट है रूप में पहर रखीकार किया कि प्रार्थी ने उस दौरान में तीन बारे अधिक पर प्रतिमाद कार्य किया, यारे यह अधिकार किया कि डिटी मी. प. ई. कैरिज ने आरोग्य दिनांक 28-6-76 के द्वारा उम्र तीन बारे प्रतिमाद की वृद्धि को मामाल किया गया और प्रार्थी को 100/-प्रति तकद धूरस्कार दिया गया। यागे यह मही होना स्वीकार किया कि मर्व श्री पुरुषोत्तम भान, गोकें जीन, अब्दुल रहमान, व सोलोमन को 7-10-74 से खालामी से पहर पर नियुक्त किया और इस नियुक्ति का यह कारण बताया गया कि इन चारों अधिकारीयों के पिता ने मर्व गत् 1974 की हड्डानाल में भाग नहीं लिया था। उन्होंने रेलवे प्रणालय की वकादारी से भाग नीकरी की थी, तथा उसके पूरस्कार हेतु उन्होंने मुग्जावों को खालामी से पहर पर नियुक्ति दी गयी थी और वहि प्रार्थी भव्यताद्वयूट है पहर पर कार्य कर रहा था, इस कारण से उन्होंने इस प्रकार का नाम नहीं दिया जा गहरा था। यांत्रे हर कारण से उमे नहीं दिया।

आगे अपन लिया कि प्रार्थी थीं गोरखन मिह वरी सोटेगिरी में जन्मियर था जिसे 75-110 में सेमी स्टेट ग्रेड में परीक्षित किया गया और उसे आए, डक्टर, मीं ई का प्रवाह दिनांक 4-6-80 को दिया गया। आगे यह थीं लिया कि उपरोक्त चारों हवेंटरी 1-8-79 से पूर्व ही मर्म स्किन्ड पदोन्नत किये गये थे अतः ये मार्मों अवक्ति प्रार्थी थीं गोरखन मिह में वर्णित थे इस कारण में गोरखन मिह को सेमी स्टेट रो पर परीक्षित लिये जाने का प्रयत्न लड़ी उठाया है इस कारण में थीं गोरखन लिह कोकोई लाभ नहीं दिया जा सकता।

पार्टी युनिव्हर्स और ऐसे थोड़े गोरखन जिह ने उत्तरा गढ़वाल प्रस्तुत किया, जिसे इस न्यायाधिकारण द्वारा स्थापित किया गया। योग्य अधिकृत प्रतिनिधि रेस्टवे ने थोड़े गोरखन जिह से जिहवे की रेस्टवे की ओर में थोड़े महत लाल ते आता राष्ट्रपत्र प्रस्तुत किया जिसे थोड़े एक स्थापाधिकारण द्वारा स्थापित किया गया। कर्मकार के अधिकृत प्रतिनिधि ने थोड़े महत लाल में जिहवे की ओर साथ्य समाप्त की।

मैंने बहुत योग्य प्रशिक्षण प्रतिनिधि प्रार्थी यूनिवर्सिटी एवं मैं योग्य प्रधिनायका प्रधार्यों रेलवे मुरीं हैं प्रशासकी का ध्यान पूर्वक प्रश्नोत्तरका लिया है न्यायालय के समक्ष विचारणीय प्रश्न निम्न प्रकार ने है। क्या प्रार्थी गोरखन तिह को ४-१-७३ में विष्णुता नहीं दिया जाना (सी. एन. डब्ल्यू.) द्वा. गुरुद. मैंकेनिन इंजीनियर पथवर्ची रेलवे अज्ञात दिए उनका एवं वैद्य था? कारोबार प्रश्न को निर्णयित करने के लिये हमें उनके पत्रकारत की साक्ष की देखना है। प्रार्थी गोरखन तिह का उनके शपथ-ग्रन्त में पृष्ठ लिखा गया है कि उने रेल प्रशासन ४-१-७३ तक अनुकूल्या के साधार पर भवित्वाद्युट खलासी के पर पर नाया लाप नहर काम्बरों में उनके लिया हो देहाना होने के पश्चात् नियुक्त किया गया था। यारे अब तिह कि मई सन् १९७१ की आम हङ्गाम में ने उन शपादारी करनवारी के नाते काम किया।

भाने कर्मा किया था 4 अक्टूबर सर्व औ पुरुषोत्तम लाल, राजेश जौन धनदुर रहनाल, व हरेगो सोनोपल को अनासो के पर पर मन् 1974 में निवारा किया। इस संघर्ष में यह भी निवारा की प्रवार्धि



काटे जाये आ नहीं? परन्तु स्थानीय प्रबन्धकों ने इस मसले को बस्तुतः रखने की अपेक्षा एक सारे दिन का वेतन काट लिया और प्रबन्धतंत्र ने न तो टूल-डॉउन हड्डताल के संबंध में उच्च अधिकारियों को सूचना दी न ही उच्च अधिकारियों द्वारा इस हड्डताल को अवैद्य घोषित कराया और महाकामे में इस प्रकार के मामले पर कोई प्रतिविवरण नहीं था, इसलिए प्रबन्ध तंत्र द्वारा मन मक्कूदू तरीके से कर्मचारियों की परेशान करने के लिए एक घंटे की हड्डताल के लिए सारे दिन का वेतन काट लिया। अन्त में यह अभिवचन रखा गया कि प्राकृतिक न्याय के सिद्धान्तों के न मानते हुए प्रबन्धतंत्र का यह कार्य द्वेषपूर्ण था और इस प्रकार से ये वेजे काटने के लिए कर्मकारों को कोई नोटिस नहीं दिया गया था और न ही उन्हें इसका कोई ज्ञान था। इस संबंध स्टेटमेंट आफ क्लेम के साथ श्री विजय रिह ने 62 कर्मकारों की लिस्ट पेश की है। इसपर लिस्ट 24 व्यक्तियों की पेश की और तीसरी लिस्ट 31 व्यक्तियों की पेश की। विषयी नियोजक संस्थान की ओर से बाबजूद नोटिस प्राप्ति के कोई उत्तरस्थित नहीं थाया इसलिए उनके विलाफ दिनांक 12-4-88 को एक पक्षीय कार्यालयी किये जाने का आदेश पारित किया गया। प्रार्थी यूनियन की ओर से श्री वसन्त बल्लभ जोशी, श्री विमल प्रकाश लहोड़ी एवं श्री शश्मृत लाल कुण्डलावत ने अपने शपथ पत्र पेश किये। न्यायालय ने इन्हाँकी की दृष्टि से उनसे कुछ प्रश्न भी और पूछे।

3. मैंने बहम योग्य अधिकृत प्रतिनिधि श्री जे.एल. शाह सुनी है और पक्षालिय का ध्यानपूर्वक अवलोकन किया है।

4. इस मौजूदा रैफरेंस में 45 कर्मकारों का, एक घंटे की हड्डताल 3-8-84 को कर्मसे पर एक दिन का वेतन काटने के बारे में विवाद पेश हुआ है और यह देखता है कि आया इस प्रकार एक घंटे की हड्डताल खाने की सूखत में क्या एक दिन का वेतन उन 45 कर्मकारों का काटना उचित एवं न्यवायतंत्र है या नहीं? मगर खेद को बत यह है कि रैफरेंस के साथ एक लिस्ट 31 कर्मकारों की और दूसरी लिस्ट 24 कर्मकारों की न्यायाधिकरण में पेश की गई है इस प्रकार 31 और 24 मिलाकर कुल 55 कर्मकार हो जाते हैं जिनकी कि सूची पेश की गई है। किर इनके अतिरिक्त एक लिस्ट 62 व्यक्तियों की दूसरी लिस्ट 24 कर्मकारों की और तीसरी लिस्ट 31 कर्मकारों की स्टेटमेंट आफ क्लेम के साथ पेश की गई है, इस प्रकार तीनों लिस्टों में 117 कर्मकारों का एक दिन की वेतन काटने का विवाद जाहिर होता है। रैफरेंस में 45 कर्मकारों का वेतन काटने का विवाद न्यायाधिकरण को निर्देशित किया गया परन्तु यह निश्चित नहीं हो पाया कि, वे 45 कर्मकार कौन कौन हैं। औद्योगिक विवाद अधिनियम, 1947 को धारा 10(4) के संबंध में 1956(1) एल.एल.जे. 629 (एल.ए.टी.) में लेवर अपोलेट ट्रिब्यूनल ने यह विविचित किया है कि—

“The scope of adjudication is entirely limited and determined by the reference and it is not open to any tribunal to travel outside the same and to decide the question on fanciful notions of social justice(y).”

5. उपरोक्त विविच्यन से यह स्पष्ट हो जाता है कि धारा 10(4) अधिनियम के तहत न्यायाधिकरण की अधिकारिता निर्देशन में रखे विवाद वी हृद तक ही रहती है वह स्वयं उसमें सामाजिक न्याय के सिद्धान्तों को कहकर निर्देशन में बाहर के तथ्यों को शामिल नहीं कर सकता है। इस सारे निर्देशन में 45 व्यक्तियों का एक दिन का वेतन एक घंटे की हड्डताल पर काटने का विवाद है। मगर ये 45 व्यक्ति कौन हैं ये रैफरेंस के साथ पेश हुई लिस्ट से निश्चित नहीं होता है क्योंकि स्टेटमेंट आफ क्लेम के साथ 117 व्यक्तियों की लिस्ट पेश की गई है। साक्ष्य में यूनियन के साक्षियों की जो साथ पेश हुई है उसमें भी वे कर्मकार व्यक्तिगत तौर पर नामजद नहीं हुए हैं और इस प्रकार 45 व्यक्तियों की लिस्ट पेश न होने न उनके नामजद होने की सूखत में ये रैफरेंस इस प्रकार बलने योग्य नहीं पाया जाता है। विशेष तौर पर से किन व्यक्तियों की एक दिन की तनखाह अवैद्य एवं अनुचित तौर से काटी गई, यह स्पष्ट न होने की सूखत में किसको क्या अनुतोष दिलाया जाये इसके अभाव में इस रैफरेंस में “नो डिस्ट्रूट” अवार्ड पारित करना ही

स्थानीयता ही है। इस रैफरेंस को या रैफरेंस के साथ स्टेटमेंट अफ क्लेम के साथ पेश की गई कर्मकारों की लिस्ट को संयोगित भी नहीं कराया गया। इनके अभाव में “नो डिस्ट्रूट” अवार्ड पारित किया जाता है। इसकी प्रतिविधि केवल सरकार को वास्तव प्रकाशनार्थ अन्तर्गत धारा 17(1) अधिनियम भेजा जावे।

प्रताप सिंह यादव, न्यायाधीश

[सं. एल. 40011/5/88-डॉ. II (वी०)]

का.आ. 1336:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रेलवे प्रशासन अजमेर दिविजन के प्रबन्धतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद औद्योगिक अधिकरण, जयपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1336.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Railway Administration, Ajmer Division and their workmen, which was received by the Central Government on the 16-5-89.

#### परिशिष्ट

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

उपस्थिति:—भानुनाथ न्यायाधीश श्री प्रताप सिंह यादव  
सी. आई.टी. :—70/84

#### मध्य

मण्डल सचिव पश्चिम रेलवे कर्मचारी परिषद, 8 सोनी धर्मशाला पृष्ठोराज मार्ग, अजमेर।

#### एवम्

1. दी जरनल मनेजर चर्चरेट बस्वर्ड।

2. दिविजन मनेजर पश्चिम रेलवे, अजमेर।

रेफरेंस:—अन्तर्गत धारा 10 (1) (घ) औद्योगिक विवाद अधिनियम, 1947

उत्तराद्देश्य:—1. श्री आर. सी. नारायण अधिकृत प्रतिनिधि पश्चिम रेलवे कर्मचारी परिषद अजमेर।

2. श्री ओ. एल. माधुर अधिकृत रेलवे डिस्ट्रिक्ट।

3. दिनांक अधार:—23-3-88

#### अवार्ड

आदत सरकार के थम एवम् पुनर्वास मंदिरालय नई दिल्ली, दे उपस्थिति, ने उनकी अद्वा संखा एल-41012 (5)/84-डॉ. II (वी०) जुलाई 1984, दे जिवित निम्न विवाद अन्तर्गत धारा 10(1) डी औद्योगिक विवाद अधिनियम, 1947, जिसे तत्प्रवालू अधिनियम लिखा जायेगा, वास्ते अधिनियमार्थ प्रतुत किया।

“Whether the Railway administration of Ajmer Division is justified in terminating the services of Shri Mahendra Kumar S/o Shri Laxmi Narayan who was declared medically unfit in category A/2 without observing the provisions of Section 25F of the I.D. Act, 1947? If not, to what relief the workman is entitled?”

स्टेटमेंट आफ क्लेम में प्रार्थी श्रमिक के बारे नियम जाहिर आये हैं कि श्री महेन्द्र कुमार पुरुष श्री लक्ष्मी नारायण को प्रारम्भ में केजुवल लेवर के रूप में लगाया गया और वह उसने 21-1-74 से 8-7-74 तक

सी. एस. आई. (यान्त्रेक्षण) अभियंग, बाहर बालाजी कार्य किया। उनके पश्चात् शिलाक २३-३-७७ तक कार्य किया, मगर यहाँ यह आरोप लगाया कि प्रार्थी अभियंग अस्थाई स्टेट्स का अधिकारी होने हुए, उस गला तार से डिमकार्ज गिरा गया। शाम शिला दिनांक २०-१२-७७ को उसे पुनः पार्ने बाला में लगाया गया और उसका १०-९-७९ को केटेगिरी ४/२ से लिए फिट होना थोड़ा गल किये जाने का प्रमाणागत ही, एम, जे, अभियंग ने शिला, और उसे टेक्निक स्टेट्स २-५-८० को दिया गया जहाँ उसने १०-१२-८२ तक ही कार्य किया। प्रार्थी अभियंग महेन्द्र कुमार को डार परीक्षण के लिए भेजा गया और यह ४/२ केटेगिरी में अनकिट घोषित किया गया और उनके बाव उसे छुप्यी पर नहीं लिया गया। शारीकरण निष्पत्त हुई स्टेट्स में यह व्यक्ति नियम है।

धी महेश्वर कुमार पर्याप्त अधिक की मेंद्राएँ 18-11-82 में डाक्टरी परीक्षा में फेल हो जाने के कारण विना नोटिस दिये, वह विना नोटिस प्रधानी का नग्नाकरण दिये समाप्त की गई। धारा 25 प्रक अधिनियम के प्राप्तिकानों का उल्लंघन वर्तने के लिए समाप्त की गई। इसलिए उन्हें 18-11-82 से भी लगातार मेंद्रा में रहता माना जायें।

आगे यह अक्षर थिया कि प्रार्थी श्रमिक प्रारम्भ की नियुक्ति में एक अद्वीतीया अक्षर छोरप में गरम मीठम की रिक्त स्थान पर 25-3-77 से 28-7-77 तक 120 दिन से अधिक कार्य किया इसलिए जो 120 दिन से अधिक लागतार सेवा करते 25-7-77 को प्रस्ताव रटेंट आज कर लिया । आगे ये भी अधिकवत रखा की भारतीय रेलवे नियोजित मैम्प्यूल के पैरा 2318 के अनुसार प्रार्थी श्रमिक को सभी उद्देश्य के लिए यानी, बैनन महाराष्ट्र भूता, मकान किराया, भविष्य तिथि फंड के लिए उस अस्ताव र्क्षकार मात्रा जावे ।

आगे अधिक किया कि प्रार्थी का इस प्रकार अस्थाई स्टेट्रो प्राप्त करने के पश्चात् रेष्ये के महाप्रबोधक के पत्र संख्या ६. ५२३/० दिनांक ८-७-७६ के द्वारा मंदिर ४ के अनुसरण में उनकी सेवा में विभिन्न प्राउंड पर. इस प्रभार में सेवा समाप्त नहीं की जा सकती थी।

अपार्थी रेलवे को ओर से स्टेट मैन्ट आफ क्लैम का उत्तर इन प्रकार प्रस्तुत विषय कि श्री महेन्द्र कुमार पुत्र थीं लक्ष्मी नारायण प्रारंभन रोयापायात विभाग में २५-३-७७ को नियाय गया था और १२० दिन का सपायात्र कार्य पुरा होने पर उन्हें २-५-८० से अध्याई स्टेट रेलवे अंतिम विनाक ११-१२-८० के अनुमार दिया । तत्त्वात् मलाप्रबन्धन परिवर्तन रेलवे बम्बई के पत्र संख्या ई. पी. ६९१/० दिनांक २३-८-७९ भनुमरण में उन्हें मेडिकल परीक्षा ८/२ कोटीमिरी के लिए अनिक्षित पाया गया और इस प्रकार महेन्द्र कुमार को चिकित्सा परीक्षण में उत्तीर्ण अनिक्षित पाये जाने से बाद वह हाजिर मर्ही थाया और दवि वह १०-११-८२ के पश्चात् भी सेवा पर हाजिर नहीं धाया तो भी जैसा की उत्तर विनाक यह जारी लगाया गया है उनकी भेवा समाप्ति किए जाने से पूर्व औद्योगिक विद्याद अधिर्नियम में तहत गोर्टिम दिया जाना दोषात्मक था ।

आगे यह बतात किया चूकि महेन्द्र कुमार मेडिकल स्टेपिरी ए/१ में फिट नहीं हुआ था। और ट्रैफिक डिपार्टमेंट में उसकी नियुक्ति के लिए यह आवश्यक शर्त थी। इसलिए उसे ट्रैफिक डिपार्टमेंट में नहीं लिया गया। आगे यह एतराज लिया यह ऑफिशियल विवाद अधिनियम के मूल छठनों का फैल नहीं और आगे यह एतराज लिया चूकि श्री महेन्द्र कुमार नवयोग प्रशासन की सेवा में नहीं है। इसलिए उसकी वरिष्ठता विलाये जाने का क्षेत्र चलते योग्य नहीं है। आगे यह भी एतराज लिया चूकि श्री भर्तेन्द्र कुमार मेडिकली अनफिट घोषित हो जाने के बाद इस्पूर्टा के लिए रिपोर्ट तहीं की। और दूसरा प्रकार उसने स्वयम् से सेवा ढोड़ दी है। यह भी एतराज लिया कि धारा 25एक अविनियम के प्राथमिक उसके केवल में वापार नहा है तथा को धारा 2(०) अधिनियम के परन्तुक की परिधि में आता है। आगे यह भी एतराज लिया सन् 1982 में प्रार्थी शमिक ने 6 सालों की समाप्ति भेजा पूरी नहीं की थी। आगे यह भी एतराज लिया कि प्रार्थी के स्वयम् के कानून के अनुसार उसने जीक सिगनल इस्टेपिरी (फार्मेटिक्शन) के तहत काम किया जो एक अस्थाई महकमा होते कर आका

एक शलग भरतिल्ड हैं और किर उन्हें 25-3-77 से याती 3 माले के परिचालन कानून दिला याती 25-3-77 के बान किया जिसमें उनके 6 वर्ष की नवा पुरी नहीं होती थी इप्राटार प्राथना की कि प्राथना पक्ष को निरसन किया जावे।

प्राची यूनियन की ओर से महेन्द्र कुमार ने फलमध्य की सम्पूर्णी में उसका रवधृत्यका प्रधानत्व पंथ किया जिसे व्याधिकरण द्वारा सद्वापित किया गया । और रेतवे जो यात्रा अधिकतम ने महेन्द्र कुमार से जिरह की । तत्सम्बन्ध रेतवे भी और से थीं वी.एस. बर्मा हड्ड कर्कोंडी, आर.एम. अर्थात् अरनेर, ने आता शपथ-पद वेण किया जिसे इस व्याधिकरण द्वारा सत्यागित किया गया और प्रार्थी यूनियन के अधिकार प्रतिनिधि ने थी वी.एस. बर्मा से प्रतिपरिवेश किया ।

वहम योग्य प्रक्रियुक्ति ग्रन्तिप्रार्थी यूनिवर्सिटी वहम वहम योग्य प्रधिकरण सूनी गयी। प्राविधिकी का इतनापूर्वक प्रवर्तन किया गया। उस्य पक्ष कारन से प्राविधिक वर्तनों पैर की गयी साथ्य को गौर करने से इस व्याधिकरण में सम्पूर्ण विवारणी प्रवर्तन है कि आपा श्री महेन्द्र कुमार प्रार्थी को सेवाएं परिदृश्य रेलवे प्रशासन नेवं प्रशासन अन्तर्में मण्डल द्वारा उत्तम विकल्पी प्रयोग्य धोजित किये जाने पर धारा 25 एक औद्योगिक विवाद प्रवित्तियम फे प्रत्यक्षता को पूर्ण किये बिना सारांप अपना उचित एवं वैध है? इस सम्बन्ध में श्री महेन्द्र कुमार ने उत्तम धर्मव्यवस्थ में यह वायद व्यक्त किये हैं। उन्होंने 21-1-71 से 8-7-74 तक मुख्य लिंगनल निरीक्षक (कन्ट्रोलर) के रूपमें लालामी के पद पर कार्य किया और व्यावर स्टेप्पन पर उन्होंने 25-3-77 से 29-7-77 तक पानी वालों में कार्य किया और आगे अवत दिया कि 29-12-77 से उसे गुरुः पानी वाले पद पर नियुक्त किया। नत्परवान् उनकी डिटर्नी परीक्षा ए/2 के बारे में बिनाक 10-9-79 को हुई जिसमें उन्हें पानी वाले विषय किया। 2-5-80 को आगे अपक्रिया किया रेलवे प्रशासन ने उन्हें दूशारा कंटेनिरी ए/2 के लिए परीक्षण के लिए भेजा गया। परन्तु उन्हें ए/3 में ही पास किया गया और डाक्टरी परीक्षण के कल्पवल्प देटेगिरी ए/2 में फेल हो जाने के कारण उन्हें नौकरी से बिता कोई निविष्ट भूत्वा आदि दिये निश्चामों के विरुद्ध अलग कर दिया गया। आगे यह भी शायद-पर यह भी अका किया ना हो उसे रिट्रैनमेन्ट का नोटिस दिया ना ही उन्हें छाटनी का मुमाला दिया। रेलवे प्रशासन का यह कहना गलत वह स्वयं नौकरी पर नहीं आया। इसके मध्य भुक्तिविल श्री बी. एम. चर्चा ने उनके शायद-पर यह भी अका किया ना हो उसे रिट्रैनमेन्ट का सम्प्राप्ति दिया जाने के लिए भेजा गया जिस मेडिकल परीक्षण के उपरान्त श्री महेन्द्र कुमार ए/2 कंटेनिरी में फेल हुआ और वह स्वयं उसके प्रत्यावान् हासिल नहीं आया वह स्वयं ही आनी द्युटी अनुपस्थित हो गया।

उभय पक्ष बारातन वी माद्य से बखूबी प्रतापिण है औ महेंद्र कुमार को 25-3-77 को व्यापर संग्रह वर पर पाती वालों में तियूक्त किया गया था उसने 29-7-77 तक पांच वार्षों में काम किया । वह तत्प्रवाम महेंद्र कुमार 28-12-77 से 10-11-82 तक पाती वाले में काये किया और औ महेंद्र कुमार का 10-9-79 का दाक्षयों परिक्षण हुआ सांकेतिकी प्र०-२ में जून छिट पाया गया । आगे साथ से यह प्र०-१ होता है । पुनः प्रावीं का तिर्यक अलाईंग दिये जाने काले गोपीक्षण करत्यापा गया तो प्रावीं कैटेगिरी प्र०-३ में अनापाद पोषित किया गया इस तिथि के पश्चात् प्रावीं ने जाहिर किया जो डिपूटी परनहीं जिमा नहीं उसे कैटेगिरी प्र०-३ वी नोब्र दी, तो मेया समानिं का मुख्यावज्ञा दिया । ऐसवै की ओर गे औं दो, एम. अमा न स्वयं का डिफूटी पर व आना चिक्कादा है । मगर उसका क्षय स यह तथ्य विवरणीय नहीं है कि यह स्वयं 10-11-82 के बारे अनुपस्थित हो गया । प्रावीं स्वयं ने अपने शपथ पूर्व व्याप में यह जिम्मेदारी है कि उसने उसके पश्चात् बहुत कौशिण की बहु भावित गया उससे प्रावीं की सीर और प्रावींनामात्र भी दिया । उसने यह भी अपने प्रतिपरिक्षण में लिखाया है कि डी.पा.आ. से कहा कि मुम्हारा बाई

बैटेंगा तब कुला लिया जायेगा। मगर रेलवे की ओर से ऐसा भी कोई प्रत्येक देश नहीं हुआ जिससे कि ये जाहिर होता है कि रेलवे प्रशासन ने प्रार्थी को मैट्रिकल कैटेगरी ए-२ में अनकिट हो जाने के पश्चात् किसी दूसरी मध्य के लिए बुलाया है। प्रार्थी अभियंता ने भी आर.एस. तक प्रार्थी को उसने यूनियन के माध्यम से अधिकारियों तक प्रशंसन दिया और याद में प्रार्थी गमनीने को बातों असफल होने के बाद यह नियंत्रण इस व्यावाधिकरण में आया इस प्रकार प्रशंसन करने से प्रार्थी के स्वयं के उचावारी वह स्वयं अपनी इच्छा से नहीं आया है। नियंत्रण इस पर प्रार्थी को सेवा समाप्ति से पूर्व नोटिस रेट्स मिल चुका था। वर्त २५-१२-८८ में कागे का रसा था तथा १०-१२-८२ तक लगानार कार्य किया यह भी प्राप्ताणि द्वारा है कि उसकी सेवा समाप्ति से पूर्व उसको ना कोई नियंत्रण से नोटिस दिया गा ही छंटनी मुआवजा दिया भा ही नोटिस अवधि का बेतन दिया।

रेलवे एडेंटेनिंग्सेट बाई बैलूम १ के नियम १४९ के मूलाधिक उपनियम में यो नियम प्रकार है।

"Not with standing any thing contained in clauses (1), (2) and (4) of this rule, if the Railway Servant or apprentice is one of whom the provisions of the Industrial Disputes Act, 1947 allow, he shall be entitled to notice or wage in lieu thereof in accordance with the provisions of that Act.—

के अनुसार नियम १४९ में जिस (१) (२) (४) के प्रावधानी के हाति है। भी कोई रेलवे कर्मचारी या प्रेसेन्टिस जिस पर श्रीदांशुगिक विवाद अधिनियम १९४७, के प्रावधान लग रहे हैं उसको इस अधिनियम के प्रावधानों के अनुसार भेदा समाप्ति ये पूर्व नोटिस या नोटिस अवधि का बेतन दिया जाना आवश्यक है। सौभाग्य प्रकाशन में प्रार्थी मैट्रिकल कुमार ने बतार चारपूर्व श्रेणी पानी बालों में यात्राका २५-१२-८८/१०-१२-८२ तक कार्य दिया सेवा समाप्ति से पूर्व एक बैलूनडर बर्थ में १० दिन से अधिक बारे अपने आपा श्रीदांशुगिक कर्मचार हो गया था उसकी सेवा समाप्ति से पूर्व उसे कोई नोटिस नहीं दिया गया ना ही उसे कैटेगरी ए-४ प्रदान या उसकी अधिकारी द्वारा दिया गया है। और यह यूनियन में उसकी सेवा समाप्ति छटनी की परिधियां में आर्थी है और वह छिट्ठी प्राप्त २५ एक अधिनियम के प्रावधानों परिवर्तना किये जाने से अवैध छठनी रही। को आपना प्रार्थी अधिक सेवा समाप्ति में पूर्व एवं यह बेतन पर बहात होने थोग्य था। मगर अब प्रार्थी कैटेगरी ए-४ हो गया है उसकी प्रोफेशन प्रत्युत्तर अवधि का बेतन का अधिकारी है।

अब अब नियम प्रधान प्रवीं के पश्च में इस प्रधान पास्ति दिया जाता है। यह कि यो मैट्रिकल कुमार पूर्व भी योगी नायाप्प जिसे मैट्रिकल कैटेगरी ए-४ में प्राप्ताणि रेलवे प्रशासन अजमेर, द्वारा किया गया उस में थारा २५ एक अधिनियम के प्रावधान की परिधियाना नहीं की गई। इस प्रकार भी मैट्रिकल कुमार की गेहा समाप्ति अनुचित अवैध रही। प्रार्थी मैट्रिकल कैटेगरी ए-३ में उसकी पास्ति के अनुसार यह जोब पाने का अधिकारी है। जिसे रेलवे प्रशासन और कर दस प्रावधानी की प्रकाशन के। उसके के अन्तर्थ आता नोटिसिकेन जारी कर उसे काम दिया जाने के लिये ११-१२-८४ से प्राप्त करेगा और उस पद पर अनुचार योग्यता १०-१२-८० से उसे जोब सिसे जाने की तिथि तक नमस्ती जापेगी। इस धोगत अधिनियम १० बेतन भले सार्वि के अधिनियम अन्य उपनियम ही देख दें आवं में। यह प्राप्त रहेगा। अबाई भी प्रतिलिपि अन्तर्नाल धारा १७(१) श्रीदांशुगिक विवाद अधिनियम के अनुसार कार्य करेगा।

श्री प्रवाल गिरि अध्यक्ष, न्यायालय  
[मा. न्या. ११०१२/३८४-३१-१(ती. १)]

वा. अ. १३३, श्रीदांशुगिक विवाद अधिनियम, १९४७ (१०-१२-८८ का १४) की धारा ११ के अनुसार में केंद्रीय सरकार द्वारा प्रशासन, अजमेर उत्तरायन अजमेर के प्रबन्धनेत्र में गमनजु नियोजिती और उसके

कर्मचारों के शीघ्र, अनुबन्ध में निर्दिष्ट श्रीदांशुगिक विवाद में श्रीदांशुगिक अधिकरण, अजमेर के व्यवस्था को प्रकाशित करती है, जो केन्द्रीय सरकार को १६-५-८९ प्राप्त हुआ था।

1337.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Railway Admin. Ajmer Division, Ajmer and their workmen, which was received by the Central Government on the 16-5-89.

### परिणाम

केन्द्रीय श्रीदांशुगिक व्यावाधिकरण, अजमेर

केव भं सी.आई.टी. २४/१९८५

केन्द्रीय सरकार यम मंशावय की अधिसूचना मंत्र्या।

पा.१-११०१२(२४)४-३१-१(ती. १) विवाद १०-४-४४

मैट्रिकल रेलवे कर्मचारी परिषद, कर्मचारी, धर्माला पर्वतज भारी, आजमेर।

—प्रमियन

बेतन

जिनीजनक पर्वतज आफिसर, बैटर्न रेलवे, प्रजमेर।

२ जनरल मैनेजर, बैटर्न रेलवे, चैरगेट, बर्मई।

—नियोजकमण

उपरिक्षण।

माननीय न्यायाधीश और प्रताप सिंह यादव, आर.एच.मै.एन.

यनियन की ओर में श्री मुरेश्वर कुमार गोप्यल

नियोजकमण की ओर में वी. शी.एस. मायुर

दिनांक अप्रूप।

१५-१०-८४ (वी. शी.एस. मायुर)

अवाई

केन्द्रीय सरकार ने नियम विवाद इस न्यायाधिकरण को बास्ते नियमने देनु अपनी अधिसूचना स. एम-११०१२(२४)४-३१-१(ती. १) विवाद १०-४-४४ के द्वारा श्रीदांशुगिक विवाद अधिनियम १९४७ की जिसे तत्त्वात् अधिनियम लिया जायेगा धारा १०(१) (शी) अधिकृत उपधारा-२(ए) के अन्तर्गत प्रैषित किया है—

"Whether the Railway Administration of Western Railway, Ajmer Division, Ajmer was justified in not granting the officiating allowance to Shri Nait Ram S/o Shri Mansha Ram who has claimed to have worked as Jeep Driver with effect from 7-7-1977 to 19-4-1980? If not, to what relief the workman is entitled?"

१. उक्त नियमन के प्राप्त होने पर इस न्यायाधिकरण ने इसे पर्याप्त किया। वंजीकृत किये जाने के पर्वतज उभय वक्तव्याम को नोटिस दिये जाने के लिये गये। प्रार्थी युनियन की ओर से युक्त मृद्ग मवी, पर्सियन देवते कर्मचारी परिषद, अजमेर ने प्रार्थी नेतृत्व के पर्वतज में विस्तरित आप एवं मंसिक्ष में नियम प्रकार प्रमुख किया।

२. यह कि पांचवां जनवरी कर्मचारी पर्याप्त एवं पंजीकृत संस्था है, जिसने अधिनियम एम-प्राप्त-२३ के अन्तर्गत अन्तर्गत को नोटिस दिया है, जिसके पर्वतज यात्राम धर्माला पर्वतज अजमेर में श्रीदांशुगिक विवाद चैरगेट अध्ययन सेवा विवाद से इस न्यायाधिकरण को भेजा गया है। यह कि विवाद श्री नेतृत्व यात्रायात कारबाह अधिकारी में भेजा गया है। यह कि विवाद श्री नेतृत्व यात्रायात नियमण लियोगक (यात्रायात) कारबाह अधिकारी में भेजा गया है। यह कि विवाद श्री नेतृत्व यात्रायात में भेजा गया है। यह कि विवाद श्री नेतृत्व यात्रायात विवाद जादेश धारा अवैध किया गया है। यह कि विवाद श्री नेतृत्व यात्रायात में भेजा गया है। यह कि विवाद श्री नेतृत्व यात्रायात में भेजा गया है।

हरी हमा, माये व्यक्त किया कि सन् 1977 से 1980 तक नियमित दो से मंडल कार्यालय में जीप ड्राईवर के पद पर कार्य करता रहा, जिस पद का फ्रॉफिसियलिंग अन्नाउन्स रेलवे ग्रामन ने नहीं किया। श्री नेतराम ने जीप ड्राईवर का अप्रिमिटिव अन्नाउन्स मार्ग दो एवं रेलवे ग्रामन में यह भी प्रार्थना की थी कि उसे जीप लालक के पद पर स्थाई किया जावे। यह भी व्यक्त किया कि श्री.पी.ओ, अमरमेन ने उसके पत्र सं.ई/शी/833/29 विनांक 20-4-80 को बताया कि जीप ड्राईवर नी एक लोस्ट बना ही गई है और 20-4-80 से 1981 तक अड्डोंका आधार पर प्रार्थी नेतराम ने कार्य किया परन्तु रेलवे प्रशासन, अमरमेन ने प्रार्थी को जीप ड्राईवर के पद से हटाकर श्री नाथूजेटा को जीप ड्राईवर के पद पर लगाया परन्तु विनांक 1-6-1982 को फिर पदावत कर आई.ओ, डॉल्प्र भेजकर प्रार्थी से ड्राईवर का कार्य करवाया। हम प्रकार प्रार्थी नेतराम से शी० प०० ओ, अमरमेन ड्राईवर का काम करवाते हुए और जब जब लाड्डा हटा दिया, अतः प्रार्थी की किनेतराम को पृष्ठः ड्राईवर के पद पर लगाया जावे एवं 1977 से 1980 तक जीप ड्राईवर के पद का वेतन विनांकाता जावे जिस पद पर उसने कार्य किया व 1980 से नियंत्र होने वक्त ड्राईवर के पद का वेतन भने व यथ्य मुद्विधान्रांसे वरिष्ठता भी महिन प्रदान की जाये।

4. प्रार्थी मंडप कार्यक्रम अधिकारी परिवेश रेलवे, भ्रमणर ने उत्तर फ्लैम निम्न प्रकार से पेश किया। उत्तर फ्लैम में यह स्वीकार किया कि परिवेश रेलवे कम्बारी परिवेश एक पंजीकृत संस्था है, जिस मौद्रिकीक विवाद अधिनियम की धारा 22 के तहत नोटिस विधा और केन्द्रीय भ्रम मंत्रालयर के उत्तर प्रार्थेश के द्वारा। विवाद इस स्थायाधिकरण को भेजा गया। यह भी स्वीकार किया कि श्रमिक नेतराम युद्ध मन्त्रालयर खलासी निर्माण मिरीशांग यातायात कर्माना, भ्रमणर ने 1975 में मुद्राजम हुआ, और यह अभिव्यक्त रूपा कि इन्सपेक्टर अफ वर्सं (यातायात) अज्ञमेर के द्वारा रखे गये मम्बोल से यह जालिर होता है कि प्रार्थी नेतराम इन्सपेक्टर आफ वर्सं के तमस्तु खलासी के हप में कार्य करता था। इसलिए यह जीप ड्राइवर के बैनर का प्राफिसियेटिंग ग्रासारन्स पाने का अधिकारी नहो है। व बतौर जीप ड्राइवर की पोस्ट पाने का अधिकारी नही है।

5. प्रार्थी यूनियन के बलेम की सम्पुष्टि में भेतराम प्रार्थी का यात्रा पक्ष पेश किया गया जिसे इस न्यायाधिकरण द्वारा सत्यापित किया गया प्रथम योग्य अधिकारी रेलवे प्रार्थी यूनियन ने अपनी साक्ष्य समाप्त की। अप्रार्थी रेलवे को साक्ष्य प्रस्तुत करने के लिए तीन अधिकार विद्ये गये भगवर बावजूद इस गदर अस्वतर विद्ये जाने के रेलवे की ओर से कोई साक्ष्य प्रस्तुत नहीं की गई थी। रेलवे को साक्ष्य बन्द की गई।

6. मैंने बहुत योग्य अधिकृत प्रतिलिप प्रार्थी यूनियन (सहमतिवाली यूनियन) पर्याप्त अधिकृत प्रार्थी रेकर्ड सुनी है। पत्रावली का ध्यानपूर्वक अवलोकन किया गया है।

7. इस न्यायाधिकारण के समय विचारणीय प्रमन यह है कि आया रेलवे प्रबंधक परिवम रेलव, अजमेर प्रार्थी नेतराम पुत्र श्री मन्नाराम को 7-7-1977 से 19-4-80 तक ड्राइवर के पद पर कार्य करने का अलाउद्देश न देने में सही व जर्सीफाई थे? उपरोक्त विचारनविनंदु को भिन्नित करने के लिए इस विवाद के संबंध में यह निश्चित करना है कि श्री नेतराम पुत्र मन्नाराम ने 7-7-77 से 19-4-80 तक ड्राइवर के पद पर कार्य किया था या नहीं? इस प्रमन के संबंध में प्रार्थी नेतराम पुत्र मन्नाराम का शपथपत्र विचारनिर्णय है। श्री नेतराम ने उसके शपथ पत्र के कथन में यह घ्यक्त किया कि उसने बर्थ 1977 से 1980 तक जीप सं. एम.पी.जी. 7110 पर बड़ोर ड्राइवर के काम किया और इस जीप की लाग बुक सन् 1977 से 1980 तक उसके द्वारा भरी गई। आगे यह भी घ्यक्त किया कि इस अवधि में उससे ड्राइवर आ कार्य तो विद्या परन्तु वेतन ड्राइवर के पद का नहीं दिया गया था और यह भी व्यक्त किया कि प्रार्थी के पास ड्राइवरी का लाईसेंस है और विद्याहित अवधि में उसे खलासी का ही वेतन दिया गया। प्रार्थी नेतराम के इस शपथ पत्र के कथन का प्रतिवाद किसी साक्ष्य से नहीं होता। रेलवे की ओर से कोई नामांक भी साक्ष्य पेश नहीं हुआ है। नेतराम की जिरह से

भी उसका कोई तथ्य जाहिर नहीं हुआ है जिससे कि सन् 1977 से 1980 तक उसके द्वारा ड्राइवर का काय करना किसी प्रकार गलत प्रतीत होता है। ही इस प्रकार प्रार्थी नेतराम की मालिय में तिथित तौर पर प्रतागिर ही जाता है कि उसने अप्रार्थी रेलवे पवर-प्लकों की जांत में, एम.पी.जी. 7110 पर मग् 1977 से 1980 तक ड्राइवर का काय किया। तो अब 8110 पर भी 1977 से 1980 तक ड्राइवर का काय किया तो वह इस प्रकार कार्य करने के कारण उसी पर का प्राकिनियटिंग अवाकाश पाने का अधिकारी गायत्री जगता है और इस प्रकार दिनांक 7-7-77 से 19-4-1980 तक अबकि उसने श्रीप पर ड्राइवर का काय किया श्री॒ इस पद का बेनत मांगा बहु रेलवे प्रणालीन डारा नहीं दिया गया तो गेहा काने में रेलवे प्रणालीन परिवहन रेलवे प्रणाली महान उत्तर अविभागीया व्याख्यातित नहीं थे, यत् अवाकाश प्रार्थी यनियत के पश्च में इस प्रकार पारित किया जाता है कि—

यह कि रेलवे प्रबन्धन परिवर्तन ने दरे, अब वेरे और नेतृराम पुत्र मम्मा राम को जिन्होंने दिनांक 7-7-1977 में 19-4-80 तक जीप के ड्राइवर के तौर पर काम किया और इस अवधि का प्राक्रियियेटिंग भलाउस्स मांगा जो नहीं दिया, ऐसा करने में उनका कार्यालय आवेदन नहीं था, अतः श्री नेतृराम पुत्र मम्मा राम दिनांक 7-7-1977 में 19-4-90 तक जीप ड्राइवर के बेतनमात्र का भाक्रियियेटिंग भलाउस्स पते का प्रधिकारी है। इस अवधि में, जो उसे खलातीसी पद का बेतन दिया गया, उसे कम करते हुए व जीप ड्राइवर के पद का मिलने वाला भाक्रियाटिंग भलाउस्स पते का अधिकारी है।

अतः इस पत्राट की प्रतिलिपि केन्द्रीय सरकार को अस्ते प्रकाशन रखा गया था। 17(1) ग्रौथांगिक विकाश अधिनियम 1947, भेजा गया।

प्रशाप भिट्ठ यादव, न्यायाधीश

का.आ. 1338—प्रौद्योगिक विद्यार अधिनियम, 1947 (1947 का 14) की थाग 17 के अनुसरण में, केन्द्रीय सरकार पा. उत्तम प्राई. लूहारे उ.रे. ब्रीकानेत के प्रबन्धनत से भविष्यक नियोजकों और उनके कर्मकारों के बीच, अनुकूल्य में निर्विट औद्योगिक विद्यार में औद्योगिक अधिकरण, जयपुर के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हआ था।

S.O. 1338.—In pursuance of Section 17 of Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of P.W.I. Luhare, Northern Railway, Bikarwar and their workmen, which was received by the Central Government on the 16-5-89.

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બેંગલુરુ સ્ટીલોર્ગિકલ ઇન્ડસ્ટ્રીયર્સ લાયન્ચ

क्रम नं. सी. शाह द्वारा । १९४७

भारत गरजाए, श्रव भंकासय नई किन्नी की अधि-  
मूलना संस्कार पता. 41012/4/86 ई.-II (श्री)  
विवाह 18-2-87

ऐलेक्सेन्ड्रिया नेपाल मूर्तियन, जारिए थी प्राचीनवर्णभाषा  
उत्तराधिकारी/कमेटारी थी मंगलुराम पुस्त्र थी कल्पेष्या भाषा  
श्री पद

શનાભા

1. मण्डल कार्यिक अधिकारी, उत्तर रेलवे, ओवानेर
2. स्पार्टा रेल एवं मिर्रीधारा, सीरिंग रेलवे, लखाचूर।

## प्रार्थी पथ

उपस्थिति

शास्त्रीय व्यापारी प्रधान प्रसाप मिश्र मार्ग, अस्सी, अस्सी, अस्सी.

प्रार्थी यूनियन की ओर से,  
अप्रार्थी रेलवे की ओर से:  
दिनांक अवाहन:

श्री भरत गिरि  
श्री शने पिढ़ि  
30-12-88

प्रधान

भारत सरकार के अप संवालय के ईस्ट शाखार्थी के नियन्त्रित विवाद के असरांग धारा 10(1) द्वारा, श्रीद्वयित्री अधिनियम, 1917 अन्तर्गत अधिनियम लिङ्गा जायगा था तो अधिनियमार्थी इस व्यापारिकरण को प्रेरित किया है।

"Whether the action of the management of P.W.J. Luhare (Northern Railway Bikaner) in terminating the services of Shri Mangtaram w.e.f. 15-4-84 is legal and justified? If not, to what relief the workman is entitled to and from what date?"

इस नियन्त्रण के प्राप्त शोने पर इसे गंजीकृत किया गया था पश्चात्यान की नोटिस अर्थात् गंजीकृत छाक भेजे गए।

प्रार्थी श्रमिक मंगतूराम ने यूनियन के माध्यम से अपना स्टेटमेंट आफ कलेग निम्न प्रवार प्रस्तुत किया। यह भी प्रार्थी मंगतूराम ने दिनांक 26-6-83 से 1-4-83 तक मुख्य गार्डी परीक्षा दीक्षानेर ती रेलवे में बौद्धि केजुआल लेवर (पानीवाला) के उत्तर रेलवे लीकानेर मण्डल में कार्य किया। आगे व्यक्त किया कि श्री मंगतूराम ने दिनांक 23-9-83 से 1-4-84 तक रेल पथ नियोक्तक लडाक भी रेलवे रेलवे में हालात व रेप पर गोंदे बेरी के बीच केजुआल लेवर गंगेन के पत्र पर कार्य किया। आगे यह भी व्यक्त किया कि भंगतूराम एक कलैडर वर्ष में 240 दिन से अधिक काम करने के आधार पर लगातार काम करने वाला श्रीद्वयित्री अन्यांशी हो गया। यह भी व्यक्त किया कि प्रार्थी श्रमिक का नियोजक मण्डल कार्मिक अधिकारी नोर्डर्ने रेलवे दीक्षानेर है। आगे यह आरोप लगाया कि प्रार्थी श्रमिक की सेवा रेल पथ नियोक्तक लडाक ने सरागर गलत अनुचित व अनियमित रूप से रामान कर दी जिस कारण से कर्मचारी व नियोजक के बीच श्रीद्वयित्री विवाद उत्पन्न हो गया। प्रार्थी श्रमिक ने विद्याद यूनियन के माध्यम से चालाया परन्तु भम्भूता अधिकारी ने अनकाल थार्ता रिपोर्ट दे पेश की जिसके फलस्वरूप विवाद इस व्याधिकरण को पेश किया। अधृत सेवा समाप्ति के रूप में नियोजक नियोजक को शहरी व अधिकारी द्वारा स्थापित किया गया। प्रार्थी के अधिकार अनियन्त्रित श्री भरत सिंह ने गवाह मोहित अनी कुरी के सेवा द्वारा अधिकृत प्रतिनिधि प्रार्थी व अधिकारी को भारत प्रबंधन अवलोकन किया है।

नियोजक नियन्त्रित व अप्पम शिवि शंकरी विवाद था। कर्मचारी मंगतूराम का अत्यरण भंडिया शोने के कारण रेल प्रशासन के प्रति विवाद भासाव हो गया। अब उनकी मेवांग दिनांक 15-11-84 में नहीं तो रेल प्रशासन द्वारा गई। शाये वह अप्पम किया कि श्री मंगतूराम ने अन्यांश वर्ष 21-4-84 से 1-11-84 तक बोर्ड केजुआल रेलवे परियोगी प्रार्थी के लिए श्री रेल पथ नियोजक द्वारा के अन्यांश कार्य किया है। इस यह एन्ड्रेज रेलवे कि प्रार्थी मंगतूराम का केस धारा 2(प्रो. यो.) के अन्यांश (वी. टी.) के लडाक आया है। इस कारण वे उनकी देशा समाप्ति अद्या छठारी भी परियोग में नहीं पानी। प्रार्थी भी सेवा समाप्ति से पूर्व एक माह वा नोटिस अवया लडाने का मृशावजा दिया तो का प्रयत्न नहीं उठाया है और न ही उसके केस में पहले आए थीं जारी का सिफारी ही बाधा होता है। और अब उनकी छठारी नहीं की गई तो भारत सरकार भी निर्धारित फार्म पर इन छठारी वालन सूचना देने वा पत्र ही नहीं उठाया। अब प्रार्थी की कि प्रार्थी का कलेम नियन्त्रित किया जाये। भगवान् प्रार्थी मंगतूराम की ओर से उनके अधिकृत प्रतिनिधि श्री भरत सिंह ने दिनांक 19-11-87 को उक्त रेलवे के संबंध में रिजवाइटर पेश किया।

श्री मंगतूराम प्रार्थी ने उसके स्टेटमेंट आफ कलेम की सम्पाद्यी में अपना शपथ पत्र पेश किया। मंगतूराम के शपथ पत्र पर व्याधिकरण द्वारा स्थापित किया। रेलवे की ओप अविकरता द्वारा विवाद में न हो राम द्वारा किया। रेलवे की ओर से श्री सोहसिन भी कुरेशी ने उसका शपथ पत्र पेश किया जिसे भावाधिकरण द्वारा स्थापित किया गया। प्रार्थी के अधिकृत प्रतिनिधि श्री भरत सिंह ने गवाह मोहित अनी कुरी के सेवा द्वारा अधिकृत प्रतिनिधि प्रार्थी व अधिकारी को भारत प्रबंधन अवलोकन किया है।

गवाहान्य के अमश विचारणांश प्रणय यह है कि आया था, इन्होंने, श्री, लडाक उनके रेलवे दीक्षानेर का प्रार्थी श्रमिक मंगतूराम को शिवांक 15-4-84 से देशा से हटाने का कार्य एवं व्याधि न्याय संग्रह था और गदि नहीं हो प्रार्थी श्रमिक किस राहत को प्राप्त करने का अधिकारी है। उपरोक्त प्रत्यक्ष को नियित करने के लिए प्रार्थी मंगतूराम की साक्ष्य की संवेदनशील गोपनीय करना है थो मंगतूराम श्रमिक ने उसके शपथ पत्र में यह व्यक्त किया कि उसमें दिनांक 26-6-83 से 14-9-83 तक मुख्य गार्डी परीक्षा को लोकानेर में केजुआल लेवर पानीवाला के पद पर उत्तर रेलवे दीक्षानेर मण्डल में काम किया। आगे व्यक्त किया कि शपथ पत्र पर प्रस्तुत करना तो दिनांक 23-9-83 से 1-4-84 तक रेल पथ नियोक्तक भम्भूता की इन रेल में हालात और रामपुर बेरी के शीक्षा केजुआल लेवर गंगेन के पद पर लगातार लोकानेर में कार्य किया और शपथ पत्र एक कलैडर वर्ष में 240 दिन से अधिक काम करने के आधार पर लगातार काम करने वाला श्रीद्वयित्री गोपनीय कर्मचारी हो गया। आगे शपथ पत्र पर व्यक्त किया कि प्रार्थी का नियोजक मण्डल कार्मिक अधिकारी उत्तर रेलवे दीक्षानेर में कार्य किया और शपथ शपथ कर्मांक एक कलैडर वर्ष में 240 दिन से अधिक काम करने के आधार पर लगातार काम करने वाला श्रीद्वयित्री गोपनीय कर्मचारी हो गया। आगे शपथ पत्र पर व्यक्त किया कि उसकी सेवा समाप्ति करने से शपथ शपथ गवाह कर्मांक एक माह वा नोटिस अवया द्वारा नहीं की गई। और भी प्रार्थी श्रमिक जैसे कर्मचारी को वरीन्डा सुना शोषित की गई। यह भी आरोप लगाया कि भारत सरकार को निर्धारित फार्म में इन छठारी बालान सूचना नहीं दी गई तो ही प्रार्थी को कोई चार्ज शोड वी गई न दोहरा विभागीय जांच की गई।

दृष्टके मद्देश्यालय श्री सोहसिन भी कुरेशी वरिष्ठ लिपिक शार्मिक शिवांक रेल प्रबंधक, कार्यालय उत्तर रेलवे दीक्षानेर ने अपना शपथ पत्र पेश किया जिन्होंने यह अधिकृत किया कि प्रार्थी मंगतूराम को शिवांक 15-4-84 को नीकरी से नहीं हटाया गया था और इस संबंध में यह भी कहा कि प्रार्थी से अंतिम तोर पर दिनांक 23-9-84 से 15-11-84 तक पी. डब्ल्यू. आई. हमार के अंतर्गत कार्य किया। अपने बधान में यह भी व्यक्त किया कि प्रार्थी मंगतूराम ने नीकरी से हटाने से पूर्व एक कलैडर वर्ष में

दिन या इसमें अधिक अवधि के लिए कार्य नहीं किया। आगे आपने शपथ पत्र में यह लिखाया कि प्रार्थी मंगतूराम ने 7-8-78 से लगाकर 6-7-70 तक शपथ पत्र में अधिनियम लिख लिखनियों के मध्य एक पी. इन्ड्यू. आई. रननगढ़ के हां काम किया। फिर दिनांक 21-7-79 से पी. इन्ड्यू. आई. रननगढ़ के यद्दों 9-10-79 तक एवं सी. बी. ए. एम. आर. मुरनगढ़ ज़ंकान के अधीन 7-5-80 से 30-9-84 तक सी. टी. एम. आर. बीकानेर के अधीन कार्य किया। आगे लिखाया कि दिनांक 26-6-83 से 14-9-83 तक बतीर पानीवाला के कार्य किया और वह दिनांक 23-9-84 से 15-11-84 तक पानीवाले के पद पर बतीर के जुगल लेवर पी. इन्ड्यू. आई. हिमार के अधीन कार्य किया। आगे यह लिखाया कि प्रार्थी वा यह कथन कि उसे अप्रार्थी द्वारा 15-4-84 को नौकरी से हटा दिया गया है। और आगे यह जाहिर किया कि अप्रार्थी रेल विभाग द्वारा 25-4-84, 25-5-84, 15-4-84 व 2-6-84 को पत्र प्रदर्श एक्जीविट एम. 3, एम. 5, एम. 6, एम. 7, जारी किया। प्रार्थी को साथ से यह बहुती जाहिर हुआ है कि प्रार्थी श्रमिक मंगतूराम ने दिनांक 26-6-83 से 14-9-83 तक मुख्य गाड़ी परीक्षक बीकानेर की देखरेख में बनीर के जुगल लेवर पानीवाले के कार्य किया और दिनांक 23-9-83 से 14-4-84 तक रेल पथ निरीक्षक लूहार की देखरेख में हरपाल और गमपुरा द्वेरा के बीच गैंगमैन के पद पर कार्य किया। यहां विषयी रेलवे के गवाह की ओर से वह प्ली ली गई है कि 15-4-84 को प्रार्थी की सेवा समाप्त नहीं की गई। ऐसी सूचन में इस विवाहित बिंदु को भी नौर करने की आवश्यकता है कि आया 15-4-84 को प्रार्थी के सेवा समाप्त न करने की डिफेंस प्ली था क्या प्रभाव होगा। मोजूदा विवाद में मंगतूराम की सेवा समाप्ति की तिथि 15-4-84 अकिन की गई है। रेटेमेंट आफ कंपनी में प्रार्थी से उसकी सेवा समाप्ति की तिथि 15-4-84 लिखी है। प्रार्थी मंगतूराम की ओर से जी रिजाइंसर पेश किया गया है कि उसमें प्रार्थी की सेवा अनुबंध एवं तिरधार 15-4-84 से गलत तौर पर समाप्त करना नहीं रिक्त किया है। यदि 15-4-84 को प्रार्थी श्रमिक की सेवा समाप्त नहीं की गई थी सो अप्रार्थी रेलवे की ओर से 15-4-84 को सेवा समाप्ति किये जाने का एतत्तज किया जाना आवश्यक था। मगर रेलवे की ओर से आपसी समझोता के द्वारा यह ऐतत्तज नहीं किया गया और इस समय 15-4-84 को प्रार्थी श्रमिक की सेवा समाप्ति होने को जो चैलेज किया गया है यानि चुनौती दी गई है, ऐसा करने के लिए प्रार्थी रेलवे एस्टोड है। यहां प्रार्थी स्वयं का बयान गलत मानने का कोई कारण नहीं है और 15-4-84 को प्रार्थी मंगतूराम की सेवा समाप्ति की गई है पह उसकी गाड़ि से भी प्रमाणित हुआ है और समझौता कार्यपाली के आधार पर 15-4-84 को सेवा समाप्त किये जाने का विवाद उत्पन्न हुआ, यह सही ही रेफरेंस में लिखा गया है। प्रार्थी के बयान ने यह बहुती प्रमाणित है कि प्रार्थी मंगतूराम ने 26-6-83 से 14-9-83 तक मुख्य गाड़ी परीक्षक बीकानेर की देखरेख में बनीर के जुगल लेवर पानीवाला के रूप में उत्तर रेलवे बीकानेर मंडल में कार्य किया। 20-3-83 से 11-9-83 तक 81 दिन बनते हैं। सम्पूर्ण प्रार्थी मंगतूराम ने दिनांक 23-9-83 से 14-4-84 तक रेल पथ निरीक्षक लूहार की देखरेख में हरपाल श्रीरामपुरा द्वेरा के स्टेशनों की शीर्च के जुगल लेवर गैंगमैन के पद पर बीकानेर मंडल में कार्य किया। इस प्रकार 23-9-83 से 14-4-84 तक कुल 205 दिन कार्य करना प्रमाणित होता है। 14-9-84 से एक बर्ष पीछे की अवधि में उपरोक्त की जोड़ने से कुल 266 दिन एक कैलेंडर बर्ष में कार्य करना प्रमाणित हो जाता है और प्रार्थी की सेवा समाप्ति से पूर्व एक कैलेंडर बर्ष में 240 दिन से अधिक निरन्तर कार्य करने वाला प्रमाणित होने से यह औद्योगिक कर्मकार हो गया है। अब यह देखता है कि आया प्रार्थी मंगतूराम की सेवा समाप्ति छठनी की परिभाषा में आती है या नहीं। इस संबंध में योग्य अधिकृत प्रतिनिधि प्रार्थी ने बहुम की कि जब उत्तर रेलवे के बीकानेर मंडल में प्रार्थी श्रमिक को निरन्तर कार्य करने हुए 240 दिन पूरे हो गए ऐसे तो उसकी हटाने से पूर्व धारा 25 एक. अधिनियम की पूर्ती किया जाना आवश्यक था। यह भी बहुम की कि इस प्रकार प्रार्थी श्रमिक की सेवा समाप्ति से पूर्व कोई वर्गिता सुधि प्रकाशित नहीं की गई और न ही कोई छठनी का मुश्त्रावजा दिया गया। इसलिए प्रार्थी श्रमिक की छठनी अवैध थी। इस संबंध में रेलवे के अधिकारी ने यह अनुमति की कि प्रार्थी श्रमिक ने उसके स्कूल प्रमाण पत्र में गलत

उस तिथि लिखी हुई थी जिसके संबंध में रेलवे ने जारी सी को और जांच के पश्चात् ही उसकी रोका समाप्त की। इस संबंध में रेलवे के गवाह श्री मोहम्मद अनी कुरेणी के अपर पत्र जी गिरह काजिन थीर है। जिसमें उसके प्राप्तिकारण की पहली पंक्ति में ही यह स्वीकार किया है कि मंगतूराम को कोई आगे पत्र नहीं दिया गया था। मंगतूराम के खिलाफ कोई महकमा जांच नोटिस देकर नहीं की न ही उसकी उसका स्पष्टीकरण देने के लिए कोई प्रबंधर दिया इसमें स्पष्ट है कि प्रार्थी रेलवे की ओर से कोई अनुग्रहानामक जांच प्रार्थी के बारे में उसकी हिलयम से नहीं की। यदि कोई प्रार्थी जांच प्रार्थी श्रमिक के पौछे से की भी तो कोई उसका प्रमात्र प्रार्थी के कोंग की गुणावण पर नहीं पड़ता है। इस संबंध में प. आई. आर. 1986 मुशीम कोट 1790 श्री राजेंद्र कौर बनाम स्टेट ऑफ पंजाब पर प्रयत्निव दिया जाता है। जब भी किसी कर्मचारी के खिलाफ कोई स्टिंगमा लगता है तो उसे उसका बहाव करने के लिए अवधार दिया जाना आवश्यक होता है। ऐसे भी 120 दिन कार्य करने के पश्चात् यदि किसी की सेवा समाप्त की जाती है तो भारतीय सविश्वास के अनुच्छेद 311(2) के प्राप्तान लागू हो जाते हैं और इग प्रकार उसे कोई अवधार स्टीटीकरण न देने के कारण उसकी सेवा समाप्ति अवैध हो जाती है। प. आई. आर. 1986 मुशीम कोट 1680 भी यहां काविल गोर है। 1975 एल. आई. सी. के 1556 में यह व्यवस्था प्रतिपादित की गई है कि जहां धारा 25 एक अधिनियम के प्राप्तान की परिपालना नहीं होती है वहां समाप्त की गई सेवा भी लगानार नालू रहता ही मानी जावेगी।

वकिं मंडल कामिक प्रधिकारी बीकानेर प्रार्थी का नियोजक था ऐसी सूचन में पी. इन्ड्यू. आई. लूहार या पथ निरीक्षक लूहार उसकी सेवा समाप्त करने में अधम नहीं था और यिनां जांच किए जिन नोटिस दिए गया मुश्त्रावजा विषय औद्योगिक कर्मकार भी सेवा समाप्त की गई वह सेवा समाप्ति प्रवैध छठनी की तारीख में आती है। इस संबंध में प. आई. आर. 1988 मुशीम कोट 390 राजकुमार बनाम यूनियन आफ हिंजिया पैरा 7 पर अवलंब दिया जाता है और प्रार्थी की प्रवैध छठनी होने से उसकी सेवा समाप्ति की तिथि से पूर्ववत पद व वेन्त पर बहाल होने का अधिकारी पाया जाता है। केवल यिन दोगन में उसे हिमार बी. इन्ड्यू. आई. के पहां नियोजित रखा गया है उस अवधि के द्वारा जो वेन्त उसे मिला वह मिलने वाले परियम में से बाध्य किया जाएगा।

### अवधार

यह कि पी. इन्ड्यू. आई. लूहार उत्तर रेलवे बीकानेर के द्वारा मंगतूराम श्रमिक की सेवा समाप्ति जो 15-4-84 को वी गई वह प्रवैध एवं अनुचित थी। प्रार्थी सेवा समाप्ति तिथि से पूर्ववत पद व वेन्त पर बहाल होने का अधिकारी है। प्रार्थी श्रमिक 23-9-84 से 15-11-84 तक पानीवाला के पद पर बतीर के जुगल लेवर के पी. इन्ड्यू. आई. हिमार के अधीन कार्य किया इस द्वारा जी वेन्त पर बहाल होने के प्रधिकारी होता है। प्रार्थी श्रमिक 23-9-84 से 15-11-84 तक पानीवाला के पद पर बतीर के जुगल लेवर के पी. इन्ड्यू. आई. हिमार के अधीन कार्य किया जाना आवश्यक था। प्रार्थी की सेवा 15-11-84 से बहाल किये जाने की तिथि तक निरन्तर मानी जावेगी। इस दोगन में जो भी लाभ प्रार्थी श्रमिक को अर्जित हुए वे प्राप्त करने का अधिकारी होता है। अवधार की प्रतिनिधि धनतें धारा 17(1) औद्योगिक विवाद अधिनियम केन्द्रीय सरकार वास्ते प्रकाशनार्थ भेजी जाती है।

प्रताप मिश्र यादव, स्थायाधीन,

[नं. एल-41012/4/84-डी. II (वी)]

का आ. 1339.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुमरण में, केन्द्रीय सरकार द्वी आर. पम. पणिम रेलवे, अजमेंट के प्रवैधतंत्र से संबंधित नोटिसों और उनके कर्मकारों के बीच, अनुवैध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकारण, जयपुर के पंचपट को प्रकाशित करनी है, जो केन्द्रीय गर्वकार द्वी 16-5-89 को प्राप्त हुआ था।

S.O. 1339.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jaipur as shown in the Annexure, in the indus-

trial dispute between the employers in relation to the management of Western Railway, Ajmer and their workmen, which was received by the Central Government on the 16-5-89.

## परिचय

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केम नं. 26/2/85

## मध्य

श्री नाहर मिह गैंगमेन परिचय रेलवे कर्मचारी परिषद, ४ सोनी धमशाला, पूर्वीराज भारत, प्रजमेर।

## प्रत्यक्ष

१. मात्राप्रबन्धक परिचय रेलवे चर्च गेट, बम्बई।
२. मण्डल रेल प्रबन्धक परिचय रेलवे, प्रजमेर।
३. मण्डल कार्मिक अधिकारी परिचय रेलवे, प्रजमेर।

रेप्रेन्टेन : --गल्लर्गत धारा 10 (1) (सी) औद्योगिक विवाद अधिनियम, 1947.

उपस्थिति : --१. श्री धारा.सी. नारंग प्रार्थी गुनियन की ओर से उपस्थिति।

२. श्री धी.एम. माधुर अधिकरण परिचय रेलवे उपस्थिति।
३. विनाक धारा : -- 29-3-89

## प्रश्न

भारत सरकार के अम मंदिरालय के डैम्क अधिकारी ने उनकी आज्ञा मंद्या ११-४१०११ (१६)/८४-टी ११ (बी) दिनांक 20-४-८५ के द्वारा गल्लर्गत धारा 10 (1) (टी) औद्योगिक विवाद अधिनियम 1947, में निम्न विवाद हम न्यायाधिकरण को बास्ते अधिनियमार्थ प्रमुख किया है।

"3-Whether the action of the DRM WR, Ajmer and DPO, WR, Ajmer in terminating the services of Shri Nahar Singh after his medical decategorisation and not offering him the alternative employment is justified and legal? If not, to what relief he is entitled?"

उपरोक्त रेप्रेन्टेन के प्राप्ति के बाद रेप्रेन्टेन को हम न्यायाधिकरण, में पंचायत किया गया। हम रेप्रेन्टेन के द्वारा श्री एम. बी. पाल कर्क, श्री बी.एन. गोयल कर्क को मेडिकल श्री. केटेशज्ज द्वारा के पंचायत द्वारा सर्विस में न लगाने के मम्बन्ध में श्री बी.एम. गोयल की विरिष्टता न दिये जाने के मम्बन्ध में श्री नाहर मिह की मेडिकल फल हो जाने के कारण उसकी सेवा समाप्ती के मम्बन्ध में रेप्रेन्टेन उत्पन्न हुआ था। हम न्यायाधिकरण के द्वारा श्री बी.एम. गोयल द्वारा कर्नेम पेश न करने से उसका कर्नेम पेश करने का अधिकारी समाप्त किया गया और श्री एम. बी. पाल श्री नाहर मिह के कर्नेम की दावत पृथक-२ पत्रावलिया बनाये जाने का आदेश किया। हम प्रकार श्री एम. बी. पाल की पत्रावली 26/85 वी जो फैल हो चुकी है। श्री नाहर मिह के कर्नेम के मम्बन्ध में पत्रावली मंद्या 26/1985 काथम वी गई जो जेरेंगौर है।

श्री नाहर मिह के मम्बन्ध स्टेट मेन्ट आफ कर्नेम में यूनिट मण्डल मंडली प्रजमेर, ने निम्न प्रकार से पेश किया।

यह कि श्री नाहर मिह पुत्र श्री भोमा मिह गैंगमेन धी.उम्मा. ग्राई. प्रजमेर के अधीन दिनांक 21-7-78 से कार्यरत हैं। नाहर मिह को दिनांक 21-11-79 को डेम्परी स्टेट का कार्य प्रदान किया गया और दिनांक 27-7-76 से 3-11-82 तक श्री नाहर मिह कार्यरत रहा परन्तु पंचायत उसकी शाखा में बोट लग जाने के कारण वह जाहर लाल नेहरू अस्पताल में गया। इसाज करने के पश्चात् वह कार्य पर

आशा तो प.ए.ए.प.न. आवटरी पर्सोनल द्वारा रेलवे जग्मान भेजा। प्रार्थी नाहर मिह को रेलवे चिकित्सालय ने बी-१ की बजाय बी-१ में डाक्टरी पर्सोनल में पास कर्नेम के पंचायत प्रार्थी को इस्ती पर 30-12-82 से नहीं किया। आगे यह भी प्रत्याज किया। प्रार्थी नाहर मिह के बी-१ उनीं होने के पश्चात् चिकित्सा वर्गीकृत मान कर कार्य पर लेना चाहिये था और ऐसा न कर रेलवे प्रणामन ने प.ए.प.न. एम. क अव्याय 26 का उल्लंघन किया। आगे यह भी एनराज किया कि श्री नाहर मिह को नौकरी से निकालने का कोई नोटिस दिया नहीं छान्टी का सुप्रावजा दिया, हम प्रकार रेलवे प्रणामन ने औद्योगिक विवाद अधिनियम धारा 25 एफ का उल्लंघन किया। अतः प्रार्थी नाहर मिह को पुतः नौकरी पर लिया जावे और उसे 30-12-82 से जब तक केस का फैलना न हो इस्ती पर माना जावे, एवम् 30-12-82 से केस का निर्णय शाने तक मधी देव बेतन मन्दात्मक विवरण एवम् अन्य सुविधाएँ प्रदान की जायें।

मंडल कार्मिक अधिकारी परिचय रेलवे प्रजमेर ने ९-१२-८५ को नाहर मिह के मम्बन्ध में स्टेटोन्ट आफ कर्नेम का निम्न उत्तर प्रस्तुत किया। नाहर मिह के मम्बन्ध में यह व्यक्त किया कि प्रार्थी नाहर मिह को दिनांक 21-7-78 से नियमित अमिक यात्री केवल लेवर के स्थान में सगाया गया था न कि गैंगमेन के पद पर आगे जाहिर किया कि प्रार्थी को अस्पाई स्टर दिनांक 21-11-79 से प्रदान किया गया। इस बारे में यह व्यक्त किया कि अस्पाई स्टर उन अधिक वो प्रदान किया जाता जो नियन्तर ६ माह तक कार्य कर लेने हैं किन्तु इसका यह अर्थ नहीं है कि प्रार्थी नियमित कर्मचारी बन गया है।

आगे अक्तु किया गैंगमेन के पद के लिए नियारित मेडिकल स्टर बी-१ है। अब मेडिकल शाव्च के लिए भेजा गया तो प्रार्थी बी-१ के टेंपिरी में अधोग आगा गया तथा उसे बी-१ मेडिकल स्टर के पदों के लिए फिट पाय गय। किन्तु प्रार्थी न तो नियमित रेल कर्मचारी था न ही उसने आकस्मिक अधिक के स्थान में नियन्त्र ६ वर्ष तक कार्य किया। अतः प्रार्थी वह वैकल्पिक पद पाने का अधिकारी नहीं था इस मम्बन्ध में रेलवे बोर्ड के पद दिनांक 10-५-७३ का हवाला देने हुए एवम् जनरल मैनेजर बम्बई के पद दिनांक 7-८-७३ का हवाला देने हुए वे लिखा गया जो नियम बनाये हैं उनके अनुसार प्रार्थी वैकल्पिक पद पाने का अधिकारी नहीं है हमें नकारा। प्रार्थी एम. बी.एम. के अव्याय 26 का उल्लंघन किया गया हो अन्त में व्यक्त किया। प्रार्थी को रेल भवा की छान्टी का नोटिस पद सक्ता है। ६-६-८५/६ दिनांक 25-५-८४ मय नोटिस पे ५१५ रुपये ५० पैसे एवम् छान्टी का सुप्रावजा २६५.५० पैसे कुल रकम १२००.६० पैसे दिनांक 25-५-८४ को दे दिये गये जो प्रार्थी ने स्वीकार कर लिये हैं। अन्त में प्रार्थी कि नाहर मिह का कोई भी केस नहीं बनता है।

प्रार्थी नाहर मिह ने अपने कोनम श्री सम्पुटी में स्वयं का शास्त्र-प्रवेश किया, जिसे न्यायालय द्वारा मात्राप्रियन किया गया। रेलवे के वकील ने श्री नाहर मिह से जिरह की। रेलवे की ओर से बावजूद कई बार कोम्प पर प्रवर्तन दिये जाते हैं कोई साक्ष्य प्रेष नहीं की यह रेलवे की साक्ष्य बदल की गई।

मैंने बहम योग्य अधिकृत प्रनिनिधि प्रार्थी गुनियन एवम् अधिकरण रेलवे सुनी हैं। पत्रावली का ध्यान पूर्वक अवकाशकरन किया है। न्यायाधिकरण के समझ विचारालयीय प्राप्त यह है कि आगा प्रार्थी नाहर मिह के चिकित्सा वर्गीकृत वैकल्पिक किये जाने के पश्चात् भी उसे इसी पद पर नियोजन न दिया जाकर उसकी मेवा समाप्ती करना। वैद्य एवम् अनुचित या। उपरोक्त प्रश्न को नियंत्रित करने के लिए हमारे समझ प्रार्थी अधिक की साक्ष्य की ही साक्ष्य है। प्रार्थी नाहर मिह ने उसके शास्त्र पूर्व बयान में यह व्यक्त किया है कि उसे श्री.उम्मा.ग्राई. प्रजमेर के दिनांक 21-7-78 से नियोजित किया गय, एवम् रेल प्रणामन ने 21-11-79 को अस्पाई दजी दिया गया। नियन्त्र २१-११-७८ से ३१-११-८२ तक वह कार्यरत रहा। आगे उसने व्यक्त किया उसकी आवाज में बोट लग गयी थी। इनज कार्यने हेतु वह २९-१२-८२ तक अस्पताल में रहा और जब वह ३०-१२-८२ को इस्ती पर उसका

सर्टिफिकेट लेकर गया तो उमे प.ई.एन. के रेलवे अस्पताल की पत्र देकर डाकटरी परीक्षा के लिए भेजा। रेलवे डाकटर ने भी-1 के स्थान पर भी-1 की डाकटरी परीक्षा में पास किया। परन्तु उसे 30-12-82 भी-1 में पास होने पर कार्य पर नहीं लिया और यह कह कर भेज दिया गया उसके बारे में कोई फैसला नहीं हुआ है। कोई फैसला होणा तो सूचित कर दिया जावेगा। आदि में बार-बार पूछने पर उसे बताया गया उसे नीकर्ता से निकाल दिया है। जिरह में उसने अधिक किया वह 1978 में बारहमासी में ही काम कर रहा था। तभी से वह पक्का है और पक्का कर्मचारी के रूप में काम कर रहा था।

प्रार्थी नाहर मिह स्थवर की साथ्य से वह बाबूबी प्रभागिर होता है कि वह गेंगमैन पद पर दिनांक 21-7-78 से तब तक आंदे उसे 21-11-79 का रेलवे प्रशासन ने अस्थाई दर्जी दिया। रेलवे में कार्यकाल होने के बारे उसको अंतर्भूत में जोट लग गयी जिसके कारण वह 29-12-82 तक जवाहर लाल नेहरू असामिल अवैरोर, में जेहर ईवान रहा। दिनांक 30-12-82 को जब वह अपने कार्य पर आया तो प.ई.एन. ने उसे डाकटोरी परीक्षा के लिए रेलवे अस्पताल में भेजा, जहाँ उसे केटेजिरो भी-1 की बजाय केटेजिरो भी-1 में पास किया और उसके पश्चात उसे कार्य पर नहीं लिया गया। रेलवे प्रशासन को आदि से केवल इस प्रशासन का एन्ऱरजेंसी कुशा था कि डाकटोरी परीक्षा में जब प्रार्थी अधिक्षित भी-1 स्थान के पद के लिए फिट पाया गया था तो उस गमध त तो वह नियमित रेलवे कर्मचारी था, न उसको नियन्त्र 6 वर्ष का सेवा था। प्रार्थी के लिये पद पाने का अधिकारी नहीं था।

चूंकि प्रार्थी नाहर सिह माथ्य से उसको सेवा समाप्ती 13-12-82 को जाना प्रमाणित होती है और सेवा समाप्ति से पूर्व एक कर्नेफ्टर वर्ष में 240 दिन से अधिक नियन्त्र उसने रेलवे में कार्य किया था और वह एक कर्नेफ्टर वर्ष में 240 दिन से अधिक नियन्त्र कार्य करने वाला औद्योगिक कर्मकार है गया था। ऐसी सूची में प्रार्थी नाहर सिह को सेवा समाप्ति से पूर्व घार 25-एक औद्योगिक विवाद अधिनियम 1947 के प्रावधारों की परिवर्तना किया जाना आवश्यक था। मगर नौजूदा केम में घारा 25-एक अधिनियम को पालना नहीं को पाई वह सुनिश्चित हो चुका है। प्रार्थी नाहर सिह को सेवा समाप्ति से पूर्व 240 दिन से अधिक नियन्त्र कार्य करने वाला नहीं किया गया न ही सेवा समाप्ति करने समय नोटिस प्रवर्ति का केवल व छठनी का मुआवजा दिया, मुआवजा जो किया वह दिनांक 25-5-84 को काफी समय पश्चात दिया जो छठनी के दिन दिया जाना आवश्यक था। बाद में दिये गये मुआवजे से कानूनों पूरी होना नहीं पाया जाता है इसी प्रकार को गई सेवा समाप्त इस प्रशासन में अवैत्र छठनी को परिभाषा में ग्राही है।

यद्यपि बी.एस. माथुर योग्य अधिकारी ने यह अहम को कि मौजूदा प्रकरण में सेवा समाप्ती छठनी थी क्योंकि प्रार्थी अधिक विकित्या परीक्षा में फैल हो गया था और वह स्थवर काम पर नहीं आया था।

यांग अधिकारी को ये दलील मुझे निल्हार लगती है। यदि प्रार्थी अधिक विकित्या केटेजिरो भी-1 की अवैधा केटेजिरो भी-1 की मवत के लिए फिट था तो भी रेलवे प्रशासन का यह दायित्व था उसे मुनबादिन जारी दी जाती है। जो रेलवे रेग्यूलेशन 2605 हांडियन रेलवे एस्ट्रेलियार्मस्ट के अनुमार दिया जाना आवश्यक था। मगर प्रार्थी अधिक को आज तक भी विकित्या नहीं दी गई। रेलवे एस्ट्रेलियार्मस्ट कोड अनुमार 1 के नियम 149161 के अनुमार जो अस्थाई कर्मचारी जिन पर को अंदोगिक विवाद अधिनियम 1947, लागू होता है उसको औद्योगिक विवाद अधिनियम के प्रावधान के तहत सेवा समाप्ति से पूर्व नोटिस दिया जाना अधिकारी यों नहीं दिया गया। प्रार्थी नाहर सिह की सेवा समाप्ति घार 25-एक के उल्लंघन में किया जाना पाई जाती है जो अवैत्र छठनी है। इस अवैत्र छठनी के बारण प्रार्थी सेवा समाप्ति से पूर्वन पर व बेतन पर बहाल होने का अधिकारी है और उसके पश्चात केटेजिरो

भी-1 को जिम पॉस्ट पट रेलवे द्वारा पद स्वाक्षित किया जाता उचित समझा जाता है उसे प्राप्त करने का अधिकारी पाया जाता है।

प्रार्थी नाहर सिह के पद में प्रबाहु निम्न प्रहार से जारी किया जाता है। यह कि बी.एस.एस. बेस्टने रेलवे अधिकारी डॉ.पी.आ. बेस्टने रेलवे अधिकारी द्वारा नाहर सिह को भेडिंगों डॉ.केटिंग्हाइट करने के पश्चात् विकित्या नोटिस न दिया जाता उचित एवं देव नहीं था। प्रार्थी की सेवा समाप्ति घार 25-एक औद्योगिक विवाद अधिनियम 1947 के उल्लंघन में को जाना पाई जाती है। प्रार्थी नाहर सिह दिनांक 30-12-82 से उसके पूर्वत पद वह बेतन पर बहाल होने का अधिकारी है। रेलवे को यह छठ द्वारा कि वह प्रार्थी नाहर सिह को केटिंग्ही भी-1 के अनुमार विकित्या पास्ट पद पर नियमानुसार पद स्थापित करें। प्रार्थी नाहर सिह दिनांक 30-12-82 के बाद बेस्टियर पद का बेतन प्रार्थी के हित में बहाली की नारोव तक परियुक्त के रूप में प्राप्त करेगा। प्रार्थी पाठे के बेतन और अन्तरिम देव सभी लाग अर्जित करेगा। प्रार्थी का 1280 घारे जा 25-5-84 का नाटिम अवैत्र के बदले एवं सुधावजे के रूप में दिये गये हैं। रेलवे यह यह प्रार्थी के बनने वाले एरियस में से काट गये हैं। अवार्ड की प्रतिनिधि प्रतिशंख घारा 17 (3) औद्योगिक विवाद अधिनियम केन्द्रीय सरकार को भेजी जावे।

श्री प्रताप सिह यात्रा, न्यायाधीश

[नं. एल-41012/16/84-ई-II (बी)]

आ.आ. 1340: -- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की घारा 17 के अनुमार में, केन्द्रीय सरकार उत्तर रेलवे, बीकानेर के प्रबन्धनक से सम्बद्ध नियंत्रकों और उनके कर्मकारों के बीच, अवैत्र में नियिट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के प्रबन्ध का प्रकाशित करता है, जो केन्द्रीय सरकार का 16-5-89 का प्राप्त हुआ था।

S.O. 1340.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Railway, Bikaner and their workmen, which was received by the Central Government on the 16-5-89.

### परिणाम

केन्द्रीय औद्योगिक न्यायाधिकरण, राज., जयपुर

केम सं. भी.प्राई.टी.	53/84	53/84	53/84	53/84
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केन्द्र सरकार, श्रम मन्त्रालय, नई दिल्ली की अधिसूचना संख्या एल० 41011 (25)/83-डी.III(बी) दिनांक 13-6-84				

1. श्री हरि सिह

2. श्री रामेन्द्र

3. श्री गुलाम रहमान

4. श्री अर्जुन

प्रार्थी पद

### बासाम

1. महाप्रबन्धक, नोटरें रेलवे मुकाबला, बड़ोदा हाउस, नई दिल्ली
2. मण्डल कामिक अधिकारी, नोटरें रेलवे, बीकानेर
3. मण्डल अधिकारी, नोटरें रेलवे, बीकानेर।

4. सहायक अधिकारी, नार्दें रेलवे, हनुमानगढ़ जंक्शन ।

5. रेल पथ नियोक्ता, नार्दें रेलवे, हनुमानगढ़ जंक्शन

अप्रार्थी पक्ष

उपस्थिति:

माननीय न्यायाधीश श्री प्रताप मिह यादव

प्रार्थी यूनियन की ओर से :

श्री अरविन्दमिह गैगर

अप्रार्थी नियोजक का ओर से :

श्री लाल चन्द मेहरा

दिनांक: ज्याद्वारा :

28-2-89

CAMP BIKANER

प्रबार्द्ध

उप सचिव, भारत सरकार, श्रम एवं पुनर्वास मंत्रालय, नई दिल्ली में उमकी अधिसूचना संख्या एल. 41011 (25)/83-शी. III(शी) दिनांक 13-6-84 द्वारा निम्न विवाद इस न्यायाधिकरण के शंतांत धारा 10 (1) (शी) अधिनियम 1947, जिसे तत्पत्रात अधिनियम लिखा जाएगा धास्ते अधिनियमार्थ भेजा है :

“Whether the termination of services of Shri Hari Singh, S/o Nathising, Shri Rajendra S/o Lakhman Gangotri, Shri Gulam Rasul S/o Sadekhan, Shri Mahavir S/o Teja, Shri Arjun So Jwara casual workers working under the DPO, Northern Railway, Bikaner is justified? If not, to what relief are the concerned workmen entitled?”

आद प्राप्त उक्त नियोजन इस रेफरेस्स को इस न्यायाधिकरण में दिनांक 18-6-84 को पंजीकृत किया गया। बाद पंजीकरण के उभय पक्षकारान को नोटिस जाहिर पंजीकृत ताक भेजे गए। प्रार्थी यूनियन की ओर से दिनांक 13-12-84 को श्री प्रविन्द मिह सैगर, ने प्रार्थी यूनियन की ओर से रेटेंटमेन्ट आफ क्लेम पेश किया जिसकी प्रतिलिपि विपक्षी के अधिकृत प्रतिनिधि श्री मेहरा की दी गई। तत्पत्रात 25-2-85 की श्री लाल चन्द मेहरा ने अप्रार्थी रेलवे की ओर से अपना अधिकार पक्ष प्रस्तुत किया। श्री लालचन्द मेहरा ने दिनांक 4-4-85 को एक प्रार्थना पत्र इस आशय का न्यायाधिकरण के समझ प्रस्तुत किया कि इस रेफरेस्स में 5 अधिकारी की सेवागमानिक का विवाद है इसलिए प्रत्येक अधिकारी की फार्मल अन्वय से बनाई जावे ताकि सुगमता से जवाब पेश कर प्रकरणों का गोप्य निपटारा हो सके। यह प्रार्थना पत्र स्वीकार किये जाने पर प्रत्येक अधिकारी के सम्बन्ध में अलग-अलग फार्मल बनाई गई और इस प्रकार उन फाइलों का नम्बर 51/1 लगायत 53/5 सन 1984 अविन किये गए। पांचों अधिकारी की ओर से एक सामूहिक निम्न रेटेंटमेन्ट आफ क्लेम पेश किया गया। श्री महावीर पुल श्री मेजाराम के सम्बन्ध में पूर्व में नो डिस्पूट अवार्ड पारित हो चुका है। योग अधिकारी के क्लेम के सम्बन्ध में निम्न तथ्य रेटेंटमेन्ट आफ क्लेम से प्रकट हुए हैं :

प्रकरण संख्या 53/1 सन 84 हरि मिह गुलाम रसूल के बारे में है। श्री हरि मिह के बारे में यह संगत तथ्य जाहिर हुए है कि श्री हरि मिह श्री नव्यी सिह के बारे में यह संगत तथ्य जाहिर हुए है कि श्री हरि मिह श्री नव्यी सिह अहीर निवासी हनुमानगढ़ जंक्शन को उत्तर रेलवे की इन्वीनियरिंग शाखा में सितम्बर 1979 बतौर दीनिक बेतन भोजी कर्मचारी के रूप में रेल पथ नियोक्त क्रमांत विवाद में नियोजित किया गया था। जिसे बाद में अस्थाई रेल कर्मचारी चयुर्य थेपी का स्टेट्रेंग एवं बेतनमान रूपये 196-222 दे दिया गया। तत्पत्रात सहायक अधिकारी, उत्तर रेलवे, हनुमानगढ़ जंक्शन ने उनके आदेश दिनांक 7-8-81 द्वारा दिनांक 8-8-81 के मध्यान्तर पश्चात सेवा समाप्त कर दी।

प्रकरण संख्या 53/2 सन 84 राजेश्वर पुल श्री साल्वन गोपी के क्लेम सम्बन्धी यह तथ्य जाहिर आए हैं कि श्री राजेश्वर निवासी सूरतगढ़ को दिनांक 15-6-77 को उत्तर रेलवे इन्वीनियरिंग शाखा में अस्थाई बेट के पक्ष पर नियोजित किया गया था। तत्पत्रात दिनांक 5-5-79 को रेल पथ नियोक्त प्रथम उत्तर रेलवे हनुमानगढ़ जंक्शन में उसे दीनिक बेतन पर नियुक्त किया गया और तत्पत्रात प्रार्थी राजेश्वर को 26-1-80 को अस्थाई रेल कर्मचारी का पद एवं बेतनमान रूपये 196-232 दिया गया। तत्पत्रात सहायक अधिकारी प्रथम नोवें रेलवे हनुमानगढ़ जंक्शन ने उनके पक्ष, दिनांक 3-8-81 से उसकी सेवा समाप्त तुरन्त प्रभाव से कर दी और रेल पथ नियोक्त हनुमानगढ़ ने प्रार्थी अधिकारी राजेश्वर को पक्ष

सं. कमांक ह/5 दिनांक 5-8-81 को दिया जिसके द्वारा दिनांक 9-8-81 को 14 दिन का बेतन रूपये 174.30 प्राप्त करने के लिए दिया।

प्रकरण संख्या 53/3 सन 84 श्री गुलाम रसूल के बतौर क्लेम के बारे में है। श्री गुलाम रसूल के क्लेम के सम्बन्ध में तथ्य इस प्रकार जाहिर आए हैं कि श्री गुलाम रसूल का निर्माण नियोक्त कर्मचारी उत्तर रेलवे हनुमानगढ़ जंक्शन ने उनके कार्य धोन में मैयन के पद पर अबूर्दे दैनिक बेतन भोजी कर्मचारी के रूप में दिनांक 14-4-75 को नियोजित किया। श्री गुलाम रसूल को आद प्रस्थाई रेल कर्मचारी का बेतनमान 260-400 दिया गया। नप्साकात दिनांक 5-5-81 से प्रार्थी कर्मचारी गुलाम रसूल की सेवा समाप्त कर दी।

प्रकरण संख्या 53/5 सन 84 अर्जुन पुल ज्याद्वारा के सम्बन्ध में है। जिसे रेल पथ नियोक्त द्वितीय उत्तर रेलवे जेतमर ने उनके कार्य/क्लेम में प्रार्थी अर्जुन अधिकारी को दीनिक बेतन भोजी कर्मचारी के रूप में नियोजित किया। बाद में प्रार्थी को अस्थाई रेल कर्मचारी चयुर्य थेपी का बेतनमान दें दिया गया और उसके पास्त्रात प्रार्थी अधिकारी की अर्जुन की सेवाएं 28-7-81 को समाप्त कर दी गई।

उपरोक्त चारों अधिकारी के क्लेम के सम्बन्ध में कुछ सामान्य तथ्य इस प्रकार जाहिर किये गये हैं कि उक्त चारों ही अधिकारी ने एक कैलेन्डर वर्ष में 240 दिन से अधिक काम करने के आधार पर लगातार काम करने वाले अधिनियम कर्मचारी का दबंग प्राप्त कर सिया था। उपरोक्त चारों कर्मचारियों में से प्रत्येक को उनकी सेवा समाप्त से पूर्व एक माह का नोटिस अथवा नोटिस बेतन महीनी दिया गया और न ही छठनी का मुआवजा दिया गया। इन जैसे कर्मचारियों की बीमता सूची घोषित नहीं की गई और पहले आए के बाद बाल का भी पालन नहीं किया गया। आसे प्रत्येक के बारे में यह भी व्यक्त किया कि उनकी सेवाएं श्रीयोगिक विवाद अधिनियम की धारा 25 एक एवं जी के प्रावधानों के उल्लंघन में समाप्त की गई है इसलिए नियोजक और प्रत्येक कर्मचारी के मध्य अधिनियम के उल्लंघन हो गया क्योंकि प्रत्येक कर्मचारी की सेवा इसलिए अनुचित छठनी की परिभाषा में आती है। प्रत्येक कर्मचारी ने उसका विवाद केंज्रल लेबर यूनियन बोकानेर के माध्यम से उठाया और कर्मचारीगण आद प्रथम विभाग के बीच में समझौता बार्ता बली जो बार्ता असफल हुई। इस प्रकार समझौता बार्ता असफल होने से यह रेफरेस्स इस अधिनियम के व्यायाधिकरण में बास्ते अधिनियमार्थ आया। यह भी जाहिर किया गया कि उपरोक्त सभी कर्मचारी प्रार्थी यूनियन के सदस्य हैं। अत में यह जाहिर किया गया कि उपरोक्त सभी कर्मचारी प्रार्थी यूनियन के सदस्य हैं। अत में यह जाहिर किया गया कि इन कर्मचारियों की अनुचित अवंचत एवं अनाधिकृत रूप से सेवा भागात की गई है इसलिए वे सेवा समाप्त की तिथि से पूर्व पक्ष एवं बेतन पर बहाल होने के अधिकारी हैं।

उपरोक्त प्रार्थी कर्मचारियों में से प्रत्येक ने पूर्यक-पूर्यक उत्तर बतेम प्रस्तुत किया। प्रार्थी अधिकारण अर्जुन, हरिसिंह, व राजेन्द्र ने समरूप उत्तर बतेम स्टेटमेन्ट देश किये हैं जो निम्न प्रकार हैं :

इन तीनों अधिकारण के सम्बन्ध में प्रार्थी रेलवे की ओर से यह जवाब देश किए गए कि प्रार्थी हरि सिह, अर्जुन व राजेन्द्र ने एक कैलेन्डर वर्ष में 240 दिन कार्य नहीं किया था और इस कारण से धारा 25 एक अधिकारण का उल्लंघन नहीं होता है। अधिकारण की सेवामुक्ति बोहानी, अकम्प्यता, आदेशों की अवधेलना तथा नियोजक के द्वितीय पर प्रतिकूल प्रभाव आले आरोप मिल होने के कारण दण्ड स्वरूप की गई है। अधिकारण ने नियोजक का विवाद खो दिया है। इस सम्बन्ध में यह भी व्यक्त किया गया कि प्रार्थी अधिकारण को नियमानुसार प्रारोप पक्ष दिया गया उसके विवाद जारी होने से यह अधिकारण के बदले में उन्हें 1.1 दिवस के बेतन भले की राशि आवेदन जारी होने की विनांक पर प्राप्त कर रहे थे बेतन के समान गणना करके भुगतान किए जाने का आदेश मध्यम अधिकारी द्वारा पारित किया गया। प्रत: इस कारण से प्रार्थी अधिकारण हरि सिह, राजेन्द्र व अर्जुन कोई राहत पाने के अधिकारी नहीं हैं।

प्रकरण संख्या 53/3 सन 84 में गुलाम रसूल श्रमिक के सम्बन्ध में रेलवे की ओर से उत्तर क्लेम इम प्रकार पेश किया गया कि कंट्रीय सरकार द्वारा प्रेसिल रेफरेन्ट विद्यि में दोनों पूर्ण होने से उल्लेख जलते थे और नहीं हैं। यह कि क्लेम में मिस उबाइन्डर आफ़ प्राप्टीज का दावा होने से अपार्टी के विरोध प्रभावी प्रबाइं पारित नहीं हो सकेगा। आगे सामान्य रूप से यह भी यही ली कि जब कंट्री किसी व्यक्ति को किसी विशेष वार्य के लिए विना किसी अनुबन्ध पर रखा जाता है तो उसकी सेवाएं विशेष वार्य पूरा होने पर स्वतः ही समाप्त हो जाती हैं और इम प्रकार उस व्यक्ति के विशेष कार्य समाप्त होने पर उसके द्वारा कार्य सेवा समाप्ति उठनी की परिधि में नहीं आती है। आगे यह भी एंतराज किया कि प्रार्थी गुलाम रसूल ने 12 कैलेंडर मास में 240 दिन कार्य नहीं किया। अतः उसका ग्लेम अधिकारिक विवाद प्रधिनायम की धारा 25 एक के तहत वह संरक्षण पाने का प्रधिकारी नहीं है। अतः मैं यह भी एंतराज किया कि प्रार्थी गुलाम रसूल ने 25-3-75 से मैग्न का कार्य दिया है। वह स्वीकृत टी एल ए पर कार्य करता रहा है। इम प्रकार प्रार्थी को विना किसी लिखित अनुबन्ध अवधारा पत्र के केंग्रेल के रूप में समय समय पर रखा गया। विशेष कार्य पूरा होने पर उस स्वीकृत टी.एल.ए. की समाप्ति पर दूसरा जिशिष्ट कार्य है स्वीकृत टी.एल.ए. पर लगाया गया था। इम प्रकार प्रार्थी गुलाम रसूल की सेवा स्वतः ही विशिष्ट प्रबाइं का कार्य पूरा होने पर समाप्त हो जाती है। अतः मैं यह भी एंतराज किया कि प्रार्थी गुलाम रसूल स्वेच्छा से अनाधिकृत रूप से कार्य से अनुपस्थित हो गया। यद्योप उसे टी.एल.ए. उपलब्ध था। चिकित्सीय परीक्षण हुआ कहा गया। उसने न तो अपने आप को चिकित्सा परीक्षण ही करवाया और न ही मेडिकल मीटिंग प्राप्त किया भीर न ही वह कार्य पर लौटा। अतः प्रार्थना की कि गुलाम रसूल का क्लेम भी निरस्त किया जावे।

प्रार्थी हरि सिंह के क्लेम की सम्पूर्णी में हरियाहू स्वयं ने अपना शपथ पत्र पेश किया जिसे न्यायाधिकरण द्वारा सत्यापित किया गया और हरि सिंह से श्री लालचन्द मेहरा अधिवक्ता रेलवे ने प्रतिपरीक्षण किया। इसके मद्देद मुकाबिल रेलवे की ओर से श्री ग्रोम प्रकाश पुत्र प्यारे लाल ने अपना शपथ पत्र पेश किया जिसे न्यायाधिकरण द्वारा सत्यापित किया गया। ग्रोम प्रकाश से प्रार्थी हरि सिंह के अधिकृत प्रतिनिधि श्री भरत सिंह सैंगर ने प्रतिपरीक्षण किया। क्लेम संख्या 53/2 सन 84 की सम्पूर्णी में श्री राजेन्द्र पुत्र श्री लालचन्द गोपाली ने स्वयं का शपथ पत्र पेश किया जिसे न्यायाधिकरण द्वारा सत्यापित किया गया। श्री लाल चन्द मेहरा अधिवक्ता रेलवे द्वारा उसमें जिरह की गई। रेलवे की ओर से श्री ग्रोम प्रकाश पुत्र प्यारे लाल ने अपना शपथ पत्र पेश किया जिसे न्यायाधिकरण द्वारा सत्यापित किया गया। भरत सिंह सैंगर, अधिकृत प्रतिनिधि प्रार्थी राजेन्द्र ने ग्रोम प्रकाश से जिरह की। क्लेम संख्या 53/5 सन 84 में अर्जुन पुत्र जरावा ने अपना शपथ पत्र पेश किया जिसे न्यायाधिकरण द्वारा सत्यापित किया गया। श्री लाल चन्द मेहरा अधिवक्ता ने अर्जुन से प्रतिपरीक्षण किया। रेलवे की ओर से साध्य में कोई गशह पेश नहीं हुआ। क्लेम संख्या 53/3 सन 84 में श्री गुलाम रसूल स्वयं ने अपना शपथ पत्र पेश किया जिसे न्यायाधिकरण द्वारा सत्यापित किया गया। रेलवे के वकील श्री एल.सी.मेहरा ने गुलाम रसूल से जिरह की। रेलवे की ओर से श्री सुरेश कुमार शर्मा का बयान कराया गया जिससे श्री भरत सिंह सैंगर अधिकृत प्रतिनिधि प्रार्थी से जिरह की।

मैंने वहस प्रबिहून प्रतिनिधि प्रार्थीगण अधिवक्ता अपार्टी रेलवे सुनी है। पक्षावलियों का गयान पूर्वीक अवलोकन किया है। स्टेटमेंट आफ़ क्लेम एवं उत्तर क्लेम के आधार पर निम्न विचार गिर्नु कायम किये जाते हैं।

1. आगा प्रार्थीगण हरियाहू, पुत्र नस्ता मिह, राजेन्द्र पुत्र लालचन्द गोपाली, गुलाम रसूल पुत्र मार्द जावा एवं अर्जुन पुत्र जरावा ने उनकी सेवा सामिति से पूर्वी एक कैलेंडर वर्ष में 240 दिन से मध्यिक कार्य दलगतार कार्य करने वाले अधिकारिक कमेंटर हो गए थे।

2. आगा प्रार्थीगण हरि मिह, राजेन्द्र, गुलाम रसूल व प्रबिहून की सेवा समाप्ति छठनी की परिभाषा में आती है।

3. आगा उद्दरोक्त क्लेम प्रार्थीगण की सेवा समाप्ति धारा 25 एक अधिकारिक विवाद प्रधिनायम के प्रावधान के उल्लंघन में का गई है।

4. अनुवोद प्रवेश विचारणीय गिर्नु प्रार्थी अभियान के द्वारा रोका समाप्ति से पूर्व कैलेंडर वर्ष में 240 दिन विस्तर कार्य कर औद्योगिक वामकार होने के सम्बन्ध में है। हरि मिह ने स्वयं के शपथ पत्र में गहर अवक्त विद्या कि उसे मन 1978 में दैनिक बेनत दर पर निरन्तर किया और दिनांक 6-9-79 से रेत पत्र विचारणा 1979 रेवें हनुमानगढ़ ने उसे बेनतमान 196-232 में अस्थाई पर लिया था और सहृदयक प्रवेश अधिनियम नांदिन रेलवे हनुमानगढ़ जनशत ने दिनांक 7-8-89 से उसकी सेवाएं समाप्त की। हरि मिह के प्रकरण के सम्बन्ध में प्रार्थी के कार्य दिवारों के बारे में विविध डेज़ चाट प्रदेश एक्जीविट एम। 1 प्रस्तुत किया है जो रेलवे के अधिवक्ता का मौखिक है। इसके सम्बन्ध में रेलवे अधिवक्ता स्वयं ने यह स्वीकार किया है कि सेवा समाप्ति से पूर्व हांगर मिह अधिकार ने 240 दिन उपर कार्य दिवारों के पूरे कर लिए थे। रेलवे के गवाह एम। डब्ल्यू। आम प्रकाश स्वयं ने उसके प्रतिवर्ती विवरण में यह स्वीकार किया है कि दिनांक 14-7-79 से 4-8-81 तक लगानार कार्य किया। इस प्रकार रेलवे का गवाह से ही हरि सिंह सेवा समाप्ति से पूर्व एक कैलेंडर वर्ष में 240 दिन से अधिक निरन्तर कार्य करने वाला अधिकारिक कमेंटर हो गया था।

अधिक राजेन्द्र ने उसके शपथ पत्र में यह वक्तन किया है कि दिनांक 15-6-77 का उत्तर रेलवे में इन्जीनियरिंग शास्त्रा में अस्थाई मेट के पद पर नियुक्त हुआ तत्त्वज्ञान दिनांक 5-5-79 का रेत पत्र निरोक्त नांदिन रेलवे हनुमानगढ़ जनशत को देख रेवें में उसे दैनिक बेनत दर पर नियुक्त किया था। उसे 26-1-80 से बेनतमान 196-232 पर अस्थाई पद दिया और आगे लिखाया कि उसे दिनांक 3-8-83 को नोटिस प्रदर्श दलवा। 1 दिया कि उसकी सेवा तुरन्त प्रमाद से समाप्त का जाती है। आगे शपथ पत्र में यह भी कहा कि दिनांक 5-8-81 का रेत पत्र निरोक्त हनुमानगढ़ ने उसे नाटिम दिया कि वह दिनांक 9-8-81 का 14 दिन का बेनत 174.30 प्राप्त करे। राजेन्द्र के मद्देद मुकामिल आम प्रकाश साम्प्रदय में पंथ हुआ है। जिसने प्रार्थी राजेन्द्र की कार्य अधिविष्ट प्रदर्श एक्जीविट एम। 1 का प्रमाणित कराया है। एक्जाविट एम। 1 के सम्बन्ध में गवाह ने यह स्वीकार किया कि एक्जीविट एम। 1 राजेन्द्र की कार्य अधिविष्ट कार्यालय के एक्जीविट के आधार पर तैयार की गई है। प्रयोग एक्जीविट एम। 1 से यह प्रमाणित है कि श्री राजेन्द्र ने उसकी सेवा समाप्ति से पूर्व एक कैलेंडर वर्ष में 366 दिन कार्य किया और प्रार्थी विपक्ष रेलवे की गवाहत से यह स्वीकारी प्रमाणित है कि सेवा सामिति से पूर्व राजेन्द्र एक कैलेंडर वर्ष में 240 दिन से अधिक निरन्तर कार्य करने वाला अधिकारिक कमेंटर हो गया था।

प्रकरण संख्या 53/3 रात 84 के सम्बन्ध में श्री गुलाम रसूल स्वयं ने अपना शपथ पत्र पेश किया है और अपने इस व्यक्ति के गुलाम रसूल ने व्यक्त किया कि शपथ प्रहित दिनांक 14-4-75 को कार्य निरोक्तक द्वितीय उत्तर रेलवे हनुमानगढ़ जनशत का देख रेवें में उसे भैनत के कार्य पर वैनिक बेनत पर नियुक्त किया था। तत्त्वज्ञान शास्त्र प्रहित का भैनतमान 260-400 के भैनतमान में भैनत दिया गया। यह कि प्रार्थी अधिकारिक की सेवा 5-9-81 का समाप्त की गई। जिसके बाद गुलाम रसूल के सम्बन्ध में रेलवे के गवाह श्री गुरुण शर्मा ने यह स्वीकार किया कि गुलाम रसूल खान आई.आ. डब्ल्यू. सूरतगढ़ के पास कार्य करता था और उसके कार्य दिवारों का चाट एक्जीविट एम। 1 आई.आ. डब्ल्यू. सूरतगढ़ ने बनाया था। आगे रात भी माना कि गुलाम रसूल के सम्बन्ध में रेलवे के गवाह श्री गुरुण शर्मा ने यह स्वीकार किया कि गुलाम रसूल के सम्बन्ध में नाम प्रब एस्टर रोल में नहीं था गया रहा है। यह भी माना कि गुलाम रसूल को मुश्वावजा नहीं दिया। दोनों पक्षों का साक्ष्य

कार्य दिवसों के चार्ट एक्सीविट एम, 1 गुलाम रसूल के काम करने के सम्बन्ध में बख्बरी प्रमाणित है और यह भी प्रमाणित है कि उसकी सेवाएं 4-9-81 को समाप्त की गईं। इससे पूर्व एक कैलेण्डर वर्ष में एक्सीविट एम, 1 से 240 दिन से कही अधिक कार्य दिवस बनते हैं और यह तथ्य बख्बरी प्रमाणित है कि श्री गुलाम रसूल की सेवा समाप्ति से पूर्व कैलेण्डर वर्ष पूर्व में उसने 240 दिन से अधिक लगातार कार्य किया और वह मेवा नियम से पूर्व एक कैलेण्डर वर्ष में 240 दिन से अधिक लगातार काम करने वाला श्रीयोगिक कर्मकार हो गया था।

प्रकरण संख्या 53/5 सन 84 में अर्जुन ने उसके शपथ पत्र में ज्ञान किया कि उसे मन 1978 में रेलवे वेतन दर पर नियुक्त किया गया था और दिनांक 17-11-80 से रेलवे पथ निरीक्षक उल्लर रेलवे जेनरल नियम गैगनगढ़ ने उसे वेतनमात्र 200-250 में अस्थाई पद दिया था। उसने आगे यह भी कहा कि एक कैलेण्डर वर्ष में 240 दिन से अधिक काम करने के आधार पर वह लगातार काम करने वाला श्रीयोगिक कर्मकार हो गया था। आगे उसने यह भी व्यक्त किया कि सहायक अधिनियमा II उल्लर रेलवे हनुमानगढ़ जक्षन ने दिनांक 28-7-81 को तुरंत प्रभाव से उसकी सेवा समाप्त की। इसके मध्यम सुधारित आम प्रकाश पुत्र प्यारे लाल को रेलवे की ओर से पेश हुआ है, उसने यह स्वीकार किया है कि अर्जुन को दिनांक 28-7-81 को हनुमानगढ़ जक्षन ने अस्थाई पद दिया था। उसने कोई चार्ज शीट नहीं दी गई। इससे यह बख्बरी प्रमाणित है कि प्रार्थी अधिकारी अर्जुन सेवा समाप्ति से पूर्व 240 दिन से अधिक कार्य कर लगातार कार्य करने वाला श्रीयोगिक कर्मकार हो गया था। उपर्युक्त विवेचन के आधार पर प्रथम विचारणीय बिन्दु चारों कर्मकारों के पथ में इस प्रकार नियन्त्रित किया जाता है कि कर्मकार हरि मिह राजेन्द्र, गुलाम रसूल व अर्जुन की सेवाएं समाप्त करने से पूर्व एक कैलेण्डर वर्ष में 240 दिन से अधिक उनके द्वारा उल्लर रेलवे में लगातार कार्य कर श्रीयोगिक कर्मकार हो गए हैं।

द्वितीय विचारणीय बिन्दु उक्त चारों अधिकारी की सेवा समाप्ति छठनी की परिभाषा में आने के बारे में कायम किया गया है। वह नूरीय विचारणीय बिन्दु छठनी धारा 25 एक. अधिनियम के प्रावधानों के विलक्षण होने के सम्बन्ध में बनाया गया है। इन दोनों विचारणीय बिन्दुओं को एक साथ तथ्य किया जायेगा। इस सम्बन्ध में अधिकारण हरिमहाराजेन्द्र व अर्जुन की सेवा समाप्तियों के सम्बन्ध में मुख्यतः अप्रार्थी रेलवे की ओर से पीली गई है कि इन प्रार्थीयों को रेलवे प्रशासन ने भारतीय रेलवे संस्थापन कोड जिल्ड 1 के नियम 149 की वह से सही सेवा मुक्त किया गया है। हरिमहाराजेन्द्र के सम्बन्ध में यह भी ऐतिहासिक दिया गया है कि उसको नियमानुसार आरोप पत्र दिया गया और जांच की जाकर बोग मिह द्वारा पर उक्त रेलवे संस्थापन कोड, जिल्ड 1 के नियम 149 के अन्तर्गत उसे तुरंत प्रभाव से सेवामुक्त किया गया था और नोटिस की अवधि के बदले में उसे 14 दिन के बेतन भले की राणि देने के प्रावेश जारी होने के दिनांक पर प्राप्त कर रहे थेन के समान गणना करके भुगतान किये जाने का आदेश सक्षम अधिकारी द्वारा पारित किया गया था। इन सम्बन्ध में रेलवे प्रशासन की ओर से श्री आम प्रकाश एम.इल्यू. 1 को साध्य में प्रस्तुत किया गया है। यद्यपि श्री आम प्रकाश ने उसके शपथ पत्र में यह कहा कि प्रयास किया है कि प्रार्थी हरि मिह के विलक्षण प्रतिशोधानात्मक कार्यवाही की गई थी जो महायक अधिनियमा हनुमानगढ़ ने रेलवे पथ निरीक्षक हनुमानगढ़ की तीन दिन से जांच करके रिपोर्ट पेश करने का कहा था और रेलवे पथ निरीक्षक ने जांच करके महायक अधिनियमा हनुमानगढ़ को दिनांक 5-8-81 को खेज दी और उन जांच रिपोर्ट के आधार पर तत्कालीन महायक अधिनियमा हनुमानगढ़ श्री नानक चन्द गोप्यत द्वारा पत्रांक 4-26/बोल्यम 4 दिनांक 7-3-81 से प्रार्थी हरि मिह की सेवा नियम 149 के तहत समाप्त कर दी। भगव इस गवाह को जिरह को खेजते हैं तो उसकी गवाह ने फिरह में यह साना है कि प्रदर्श एक्सीविट इल्यू. 2 में देखा नहीं है कि प्रार्थी हरि मिह को दण्ड स्वरूप नोकरी से निकाल किया हो तो श्री आम प्रकाश की स्वीकारणेश्वरी में यह तथ्य गणन प्रमाणित हो जाता है कि प्रार्थी हरि मिह की सेवा दण्ड स्वरूप समाप्त की गई। वैसे भी इस गवाह के प्रति पर्योग्य से यह जाहिर प्राप्त है कि तथाकथित जांच का प्रार्थी को नोटिस नहीं दिया गया और

प्रार्थी हरि मिह को गवाहों से जिरह करने का अधिकार नहीं दिया गया। जांच अधिकारी ने ही कायमों के मानविक गवाहत से स्वयं जिरह की। इन तीनों कायमों से जांच नैमार्गिक व्याप के गुस्तापित मिद्दांतों के विलक्षण होने एवं अनुसामनात्मक जांच के नियमों का पालन न करते हुए जो जांच की गई वह अवैध थी। वैसे भारतीय रेलवे संस्थापन कोड बोल्यम 1 के नियम 149 में प्रस्थाई रेलवे कर्मचारियों की सेवा समाप्ति के सम्बन्ध में नोटिस देने के बारे में उप नियम 6 निम्न प्रकार है।

Notwithstanding anything contained in clause (1), (2) and (4) of this rule, if the Railway servant or Apprentice is one to whom the provisions of the Industrial Disputes Act, 1947, he shall be entitled to notice or wage in lieu thereof in accordance with the provisions of that Act.

उपर्युक्त 146 (6) के प्रावधान से यह स्पष्ट है कि रेलवे नियम 49 (1), (2) व (4) के बलांजे में जो प्रावधान नोटिस आदि के बारे में है, रेलवे कर्मचारियों या रेलवे में प्रोटेस्टिम जिस पर श्रीयोगिक विवाद अर्थात् नियम 1947 के प्रावधान लागू होते हैं उस अवसरा में नियम 149 के उप नियम (1), (2) व (4) के प्रावधानों के बावजूद भी सेवा समाप्ति करने से समय रेलवे कर्मचारी को नोटिस के बदले वेतन दिया जाना श्रीयोगिक विवाद अधिनियम के तहत आवश्यक है। यह स्वीकृत नाथ है कि प्रार्थी हरि मिह को नोटिस नहीं दिया गया न उसे छठनी का मुआवजा दिया गया। ऐसे मुख्य में उसकी सेवा गमाप्ति छठनी की परिभाषा में आती है और छठनी भी धारा 25 एक. अधिनियम की रुह में अवैध पाई जाती है।

राजेन्द्र की सेवा समाप्ति के सम्बन्ध में उसने आपने शपथ पत्र में यह व्यक्त किया है कि महायक अधिनियमा प्रथम उल्लर रेलवे हनुमानगढ़ ने पत्र सं. ई. 26/भाग ब्युट्यु दिनांक 3-8-81 से उसकी सेवा तुरंत प्रभाव से समाप्त करने का आवेदा किया। जिरह में उसने व्यक्त किया कि उसे हटाने से पहले उसी दिन आवेदा एक्सीविट इल्यू. 1 दिया था जिसके गाय उसे 14 दिन का वेतन नहीं दिया। इसके मुद्रवेमुकाबिल रेल की ओर से श्री आम प्रकाश गवाह पेश की जाने प्रार्थी राजेन्द्र द्वारा मिहर्दा जर्तैल मिह को गानी गलीच निकालने के सम्बन्ध में आर्जनीट देना जाहिर किया भगव इस गवाह की जिरह में इसने स्पष्ट स्वीकार किया कि राजेन्द्र को मेजर पैनल्टी ने देने के लिए रिकार्ड के अनुसार कोई चार्ज शीट नहीं दी थी। केवल विचारणीय जांच की गई थी। इसने आगे यह भी स्वीकार किया है कि प्रार्थी श्रमिक को गवाहों से जिरह करने का कोई मौका नहीं दिया गया था और यह भी माना कि गवाहों से जिरह की गई वह जांच अधिकारी ने ही की थी। यह भी गवाह को गवाहों से जिरह से स्पष्ट हुआ कि रेलवे की ओर से कोई केस के लिए प्रस्तुतकार नियुक्त नहीं किया था। न ही जांच की रिपोर्ट प्रार्थी श्रमिक को दी। प्रार्थी यह भी जिरह से स्पष्ट हुआ कि प्रार्थी राजेन्द्र को दण्ड स्वरूप सेवा से प्रथक किया था। प्रथम की यह साट है कि प्रार्थी को कोई मेजर पैनल्टी की चार्जर्नीट नहीं दी थी और किर उसे उसी जांच के फलस्वरूप मेजर पैनल्टी दी थी। इस प्रयार यह जांच विचारणीय था। आम प्रकाश को जिरह से यह भी स्पष्ट है कि प्रार्थी श्रमिक राजेन्द्र को एक माह के नोटिस नहीं दिया न नोटिस के बदले वेतन दिया गया न ही उसे कोई मुआवजा दिया गया व वर्गेन्डना भूमी भी धार्यापन नहीं दी गई। इस प्रकार रेलवे के गवाह की जिरह से प्रार्थी राजेन्द्र को सेवा समाप्ति अवैध घटनी की तारीफ में आती है जो धारा 25 एक. अधिनियम के प्रावधान के बिलाफ पाई जाती है।

अर्जुन के शपथ पत्र में उसने व्यक्त किया कि प्रार्थी अर्जुन को नोटिस महायक अधिनियमा II उल्लर रेलवे हनुमानगढ़ जक्षन ने दिनांक 28-7-81 को दिया और उसी के द्वारा उसकी सेवा तुरंत प्रभाव से समाप्त करने की जिरह को खेजते हैं तो उसकी गवाह ने फिरह में यह साना है कि प्रदर्श एक्सीविट इल्यू. 2 में देखा नहीं है कि प्रार्थी हरि मिह को दण्ड स्वरूप नोकरी से निकाल किया हो तो श्री आम प्रकाश की स्वीकारणेश्वरी में यह तथ्य गणन प्रमाणित हो जाता है कि प्रार्थी हरि मिह की सेवा दण्ड स्वरूप समाप्त की गई। वैसे भी इस गवाह के प्रति पर्योग्य से यह जाहिर प्राप्त है कि तथाकथित जांच का प्रार्थी को नोटिस नहीं दिया गया और जिरह की जिरह से प्रार्थी अर्जुन को कार्जर्नीट नहीं दी गई।

मुप्रावजा विद्या गया और न उगके भव्यन्त्र में कोई परिणाम सूचि हो व्योगत की । अर्जुन की साध्य व रेतवे के गवाह से यह बाबूबी प्रमाणित है कि अर्जुन को धारा 25 एक श्रीधोगिक विद्याव अधिनियम के प्रावधान के तहत न तो उसे एक माह का नोटिस दिया न जानिय अधिकारी पा वेन दिया और न ती छटनी का मुआवजा दिया । यहाँ तक कि भारतीय रेतवे संस्थापन कोड बोल्ड 1 के नियम 149 के तहत उसे 1.1 दिन का नोटिस भी नहीं दिया । इस प्रकार जो श्रीधोगिक कर्मकार की सेवा विद्या नोटिस के समाप्त की धारा 25 एक के प्रावधानों का उल्लंघन किए जाने से अर्जुन की छटनी अवैध पाई जाती है ।

गुलाम रम्युल की स्टेटमेंट आफ कलेम के स्यूदेमुकाबिल रेतवे की ओर से यह जवाब पेश किया गया है कि उसे मैमन के हैमियर से एक स्वीकृत दी.एल.ए. पर एक विशेष समय के लिए लगाया गया था । एक दी.एल.ए. की समाप्ति पर दूसरे दी.एल.ए. की स्वीकृति पर उसे काम पर लगाया जाता था । विना किसी विविध अनुबन्ध अधिकारी पक्ष के ही उसे केज़ाल के रूप में समय-समय पर रखा गया थी.एल.ए. की समाप्ति पर उसकी सेवा खत्तन श्री गुलाम रम्युल हो गई । इस रेतवे की पी के मद्दते मुकाबिल गुलाम रम्युल ने स्वयं के सपथ पक्ष में यह शपथ पर अवत दिया है कि उसकी सेवा गरामर गलन, अवारण, अनुचित व अनाधिकृत अवैध रूप से समाप्त की । उन्हें यह भी साठ तीर से कहा कि उसे कोई सेवा समाप्ति का नोटिस नहीं दिया । गुलाम रम्युल ने उसके प्रतिपरीक्षण में यह भी अवत दिया कि यह गलत है कि उसे विशेष कार्य के लिए दी.एल.ए. पर रखा था । उन्हें इसे भी गलत बताया कि विशेष कार्य पूरा होने पर दूसरे दी.एल.ए. पर उसे रखा हो । यह भी जिरह में अवत किया कि उसकी कार्य प्रवृत्ति में भ्रेक नहीं दिया और इसे भी गलत बताया कि वह अपनी स्वेच्छा से नीकरी छोड़ गया हो । इसके मूद्दे मुकाबिल रेतवे की ओर से सुरेण कुमार गवाह पेश हुआ जिन्हें अवक्त किया कि गुलाम रम्युल को मेडिकल ट्रेस्ट के लिए लिका कर भेजा था । मेडिकल के लिए उन्हें भी भीमों नहीं दिया । वह 5-8-81 को कार्य पर नहीं आया । उन्होंने इसे सेवा से नहीं लिकाना बहिक डाक्टरी के लिए भेज दिया थे । श्री सुरेण कुमार ने उसकी जिरह में यह माना कि गुलाम रम्युल श्रमिक को 25-3-75 को सेवा में लगाया था थी.ए. 4-9-81 तक वह थीर मेडिकल के रहा । यह भी वह नहीं बता सका कि गुलाम रम्युल रम्युल का नाम कब तक मस्टर रोल में चला । यह स्पष्ट तीर से माना कि इस समय गुलाम रम्युल का नाम मस्टर रोल में नहीं चल रहा है । श्री सुरेण कुमार शर्मा ने जिरह में यह भी माफ तीर से मान लिया कि गुलाम रम्युल को छटनी का मुप्रावजा नहीं दिया । मजदूरी समाप्त होने भी उसका नाम मस्टर रोल से हटा दिया । यह भी माना कि उसको खार्जीट नहीं दी न विभागीय जोच की । मस्टर रोल से नाम हटा देना यह छटनी की परिभाषा में आता है । किसी प्रकार से भी इस तरह से सेवा से समाप्त कर देना छटनी की नारीक में आता है । प्रार्थी श्रमिक गुलाम रम्युल को छटनी का मुप्रावजा नहीं दिया न उसको चार्जीटी दी न उसके विद्याव विभागीय जोच की । ऐसी सूचन में उसकी सेवा समाप्ति धारा 25 एक अधिनियम के प्रावधान के विरुद्ध पाई जाती है इत्यनिय गुलाम रम्युल की सेवा समाप्ति अवैध छटनी की तारीक में आती है और उसकी सेवा समाप्ति अनुचित अवैध एवं अनाधिकृत रूप से की जाना प्रमाणित होती है । इस प्रकार यह विभागीय बिन्दु बंधा 2 और तीन भी प्रार्थीगण के पक्ष में निर्णय किये जाते हैं ।

मूँक प्रार्थीगण लरि मिह, राजेन्द्र, अर्जुन और गुलाम रम्युल ही छटनी धारा 25 एक श्रीधोगिक विद्याव अधिनियम के प्रावधानों के विरुद्ध की गई होना प्रमाणित हुई है इस प्रकार उनकी सेवा समाप्ति अनुचित अवैध एवं अनियमित तीर से की गई है । उपरोक्त चारों प्रार्थीगण उनकी सेवा समाप्ति की विधि से अब तक निरन्तर सेवा में मासा जावेगा और इस अवधि के दौरान जो भी देय लाभ उपलब्ध हुए हैं उन्हें भी वे पाने के प्रधिकारी पाए जाते हैं ।

श्रवाई

1. लरि गिह पुत्र श्री नवी गिह की सेवा समाप्ति दिनांक 7-8-81 को अवैध अनुचित तीर से की गई है । अतः उसकी छटनी धारा 25 एक श्रीधोगिक विद्याव अधिनियम के प्रावधान के विरुद्ध किए जाने से अवैध एवं अनुचित पाई जाती है । अतः उसकी सेवा समाप्ति का श्राविण दिनांक 7-8-81 निर्गत किया जाता है और वह 8-8-81 से सेवा समाप्ति से पूर्ववत पद व वेन दिया जाता है । 8-8-81 के पश्चात मेवावहाली की विधि तक वह वेन एवियर्स के रूप में प्राप्त करेगा । सेवा समाप्ति की विधि से वहाँकी की विधि तक के बीच यह अवैध नाम अर्जित हुए हों तो वे भी वह प्राप्त करने का प्रधिकारी होगा ।

2. श्री राजेन्द्र पुत्र श्री लालन गंगोत्री की सेवा दिनांक 3-8-81 को अवैध रूप से समाप्त की गई जो सेवा समाप्ति का अवैध आदेश निर्गत किया जाता है । इसकी छटनी धारा 25 एक अधिनियम के प्रावधानों के विरुद्ध की गई प्रमाणित हुई है । अतः असिक राजेन्द्र पुत्र लालन गंगोत्री उसकी सेवा समाप्ति दिनांक 3-8-81 से पूर्ववत पद व वेन दिया जाता है । श्री राजेन्द्र सेवा समाप्ति की विधि 3-8-81 से सेवा में बहानी की विधि तक व पूर्ववत दर से वेन एवियर्स के रूप में प्राप्त करेगा यदि 3-8-81 से बहान किये जाने वी नारीक तक यदि अन्य और देय लाभ अर्जित हुए हों तो वे भी वह प्राप्त करने का प्रधिकारी होगा ।

3. गुलाम रम्युल की सेवा समाप्ति दिनांक 5-8-81 को अवैध पाई जाती है । उसकी सेवा समाप्ति के आदेश को निर्गत किया जाता है । श्री गुलाम रम्युल की छटनी धारा 25 एक अधिनियम के प्रावधान के अवैध होने से अवैध पाई जाती है । अतः प्रार्थी श्रमिक गुलाम रम्युल सेवा समाप्ति की नारीक से उसके पूर्ववत पद व वेन पर बहाल होने का प्रधिकारी है वह दिनांक 5-8-81 के पश्चात बहाल होने की विधि के मध्य काल व वेन नियमानुसार एवियर्स के रूप में प्राप्त करेगा । इस दौरान में यदि अन्य अवैध नाम अर्जित हुए हों तो वे भी वह पाने का प्रधिकारी होगा ।

श्री अर्जुन पुत्र जवाहर की सेवा समाप्ति दिनांक 28-7-81 को अनुचित अवैध रूप से निर्गत की गई । उसकी छटनी धारा 25 एक अधिनियम के प्रावधान के विरुद्ध पाई जाने से अवैध थी । इसलिए श्री अर्जुन पुत्र जवाहर की सेवा समाप्ति आदेश दिनांक 28-7-81 निर्गत किया जाकर उसे सेवा समाप्ति के दिन से पूर्ववत पद व वेन पर बहाल किया जाता है । सेवा समाप्ति के दिन के पश्चात और उसे बहाल करने की विधि व वह उभी यम में नियमानुसार वेन प्राप्त करेगा और हम अवधि तक जो भी देय लाभ उपरोक्त विधि के रूप में वाली होगी वे भी वह पाने का प्रधिकारी होगा ।

श्री महार्षी पुत्र लेजा के सम्बन्ध में पहले ही नी हिस्प्यूट अवैध पार्टिंग हो चुका है । उपरोक्त अवैध की प्रतिलिपि अनार्थ धारा 17 (1) श्रीधोगिक विद्याव अधिनियम 1947 के द्वारा यमकार को वास्ते प्रकाशनार्थ भेजी जाये । अवैध आज दिनांक 28-2-89 को बीकानेर कैम पर जारी किया गया ।

[मं.प.ल-41011/25/83 ई II(बी)]

प्रसाप गिह वादिक, न्यायालय

तर्दि दिल्ली, 26 मई, 1989

का, आ. 1341-श्रीधोगिक विद्याव अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसार भी नी हिस्प्यूट अवैध पार्टिंग धारा 17 (1) श्रीधोगिक विद्याव अधिनियम 1947 के द्वारा यमकार को वास्ते प्रकाशनार्थ भेजी जाये । अवैध आज दिनांक 28-2-89 को बीकानेर कैम पर जारी किया गया ।

New Delhi, the 26th May, 1989

S.O. 1341.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the award of the Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telegraph Department, Shahjahanpur and their workmen, which was received by the Central Government on the 12-5-89.

#### ANNEXURE

BEFORE SHRI ARJAN DEV PRESIDING OFFICER  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
CUM LABOUR COURT, KANPUR

Industrial Dispute No. 139 of 1987

In the matter of Shri Shiv Kumar Dubey.

S/o Shri Rama Shanker Dubey,

Village & Post Rasoolabad,

District Faizabad

Petitioner.

AND

The Sub Divisional Officer,

Telegraph,

Shahjahanpur,

Uttar Pradesh

Opp. Party

#### AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-40012/43/86-D.II(B), dated 2<sup>nd</sup> September 1987, has referred the following dispute for adjudication :—

Whether the action of the management of Telegraph Department Shahjahanpur, in terminating the services of Shri Shiv Kumar Dubey, casual labour w.e.f. 19-10-84, is legal and justified ? If not, to what relief the workman entitled to ?

2. It is the admitted case of the parties that the above named workman had worked for 1336 days during the period 19-9-80 to 18-10-84 and in the gradation list of the casual labour of Shahjahanpur Sub Division dt. 31-7-83, his name appeared at serial no. 19.

3. The workman's case in brief is that his services were terminated by the management w.e.f. 19-10-84, without notice or notice pay. In his place sub Inspector (T) Mohd. Qayum took one Rajesh Kumar Choubey. Having worked for more than 240 days in 1983, he ought to have been given regular appointment as line man. In connection with his illegal retrenchment he made an application to Sub-Inspector Mohd. Qayum, but in vain. Thereafter on 16-1-85, he sent applications under certificate of posting to SDO(T) Shahjahanpur and Divisional Engineer (T), Sitapur, but to no effect. Subsequently he sent registered letters on 9-2-85, 8-3-85 and 12-3-85, to Dy. Divisional Officer Shahjahanpur Divisional Engineer (T) Sitapur and to the Hon'ble Minister for Information. When nothing happened on his representation he gave registered notice u/s. 80 c.n.c. to the parties concerned. He has therefore, prayed that the management be directed to post him as regular employee or regular lineman w.e.f. January 1984 and pay him arrears of wages from January 1984.

3. In defence, the management plead that the workman went on leave for 4 days and thereafter he did not turnup. Shri Rajesh Kumar Choubey was kept in service w.e.f. 1-11-79. He was senior to the workman in question. The question of regular appointment to the workman does not arise as so far those working as casual labour since 1977, have not been given regular appointments.

4. In his rejoinder the workman has denied that he proceeded on leave as alleged by the management and thereafter did not join duty. According to him his services were illegally terminated in order to accommodate Shri

Rajesh Kumar Choubey, who was an employee of other Division and who was also junior to him.

5. In support of his case the workman has filed his affidavits dt. 16-8-88 and 26-7-88 and in support of their case the management have filed the affidavit dt 4-2-89 of Shri Lok Pal Singh Chauhan SDO(T). Both sides have also relied upon a number of documents in support of their respective cases.

6. Admittedly the workman had worked till 18-10-84 and during the period 19-9-80 to 18-10-84 he had worked for 1336 days. In his cross examination the management witness has admitted that during 1984 workman had worked for 269 days. In view of it the workman was entitled to the benefits provided for by section 25F ID. Act at the time of termination of his services. This is the general Law.

7. The first dispute between the parties is on the point whether or not workman had gone on 4 days casual leave. Since the workman has denied this fact, the burden of proof on this point lies on the management.

8. In para 2 of his affidavit, the management witness has deposed that the workman went on leave for 4 days in October 1984 and thereafter did not turnup nor he gave any application regarding his absence to SIT Mohd. Qayum who is dead. In the said para of his affidavit, the management witness has referred to the report of the said SIT copy of which is annexure I to the rejoinder affidavit and also filed photostat copy of Mustor Roll which is annexure II to the said affidavit. In the verification clause it is stated that the contents of para 1 and 2 of the affidavit are correct to his personal knowledge. In his cross examination the management witness has denied that the workman had not gone on 4 days casual leave which he had taken orally.

9. Annexure I to the rejoinder affidavit dt. 2-5-88 filed on behalf of the management is the copy of the report dt. Nil of Late Mohd. Qayum SIT. It appears to have been received in the office of Dy. Divisional Officer (T) Shahjahanpur on 15-4-85. In his report Mohd. Qayum has written that on 15th or 16th October 1984, the workman had told him that he was going to his home for 4 days. He further writes that since then the workman had not written him any letter nor had come back on duty. This fact that Mohd. Qayum is dead is also admitted by the workman in his cross examination.

10. Annexure II to the rejoinder affidavit is the copy of Mustor Roll which shows that in the month of October he had been marked present upto 18th and thereafter he had been marked absent.

11. The above evidence led on behalf of the management thus shows that in the month of October 1984, he had worked upto 18th and not thereafter.

12. Now let us see what the workman says, against it. In para 4 of his affidavit dt. 26-7-88, the workman writes that it is wrong to say that he had proceeded on leave and thereafter did not join duty. He was very much present and his services were illegally terminated by SDO Telegraph Shahjahanpur in order to accommodate his man Shri Rajesh Kumar Choubey. He further writes that when till 26th October, 1984 he was not allowed to resume duty, he moved an application on 26th October 1984 but when despite that he was not given employment he went back to his village.

13. In the cross examination he states that on 19-10-84, he presented himself for duty at about 7 a.m. It was only at about 10.30 a.m. when others had been sent on duty that Mohd. Qayum SIT told him that he would not take him on duty. At that time no one was present. When he inquired about its reason Sh. Qayum did not give him any reason for his act. Then he has stated that at about 1 p.m. that very day he met SDO (T) in his office at Shahjahanpur, who after hearing him assured him that in 5 or 6 days time he would be given duty. He admits

that he made no complaint in this regard in writing. According to him when till 25-10-84, nothing came out he went back to his village which is in District Faizabad. It was on 26-10-84 that he wrote a letter to SIT Shahjahanpur, under certificate of posting. The copy of the letter is annexure I to his affidavit dt. 26-7-88.

14. I have gone through the copy of the letter dated 26-10-84, referred to above and in this letter the facts deposed to by him in his cross examination that Sub Inspector (T) did not give him duty and that he had met that very day SDO (T) Shahjahanpur in his office, who after hearing him had assured him that he would be taken on duty in 5 or 6 days time do not find mention. Further after the assurance alleged to have been procured by him from SDO (T) Shahjahanpur, he would have written the letter in case of non giving of duty to SDO (T) Shahjahanpur and not to Sub Inspector (T).

15. Next I refer to the copies of other letters filed by him in this case. They are annexure III and IV of his affidavit dated 16-8-88. Annexure III is the copy of letter dated 16-1-85 addressed to Up Mandal Adhikari (T) Shahjahanpur and Annexure IV is the copy of letter dated 8-3-85 addressed to the said Officer. In these two letters also no mention is made of facts which are alleged by him in his cross examination to have transpired on 19-10-84. Annexure IV to the affidavit dated 16-8-88 is the copy of application dated 19-8-86 filed by him before ALC (C) Dehradun. In this application also no mention is made of the above facts.

16. I may state here that the receipt of these letters has not admitted by the management witness in his affidavit. He has simply admitted the receipt of notice u/s 80 C.P.C. dated 26-3-85 given by the workman. To prove that the above letters were sent, the workman has not filed the certificate of posting nor postal receipts of registration.

17. There is no evidence that any officer of the Telegraph department or Mohd. Qayum SIT had any enmity with the workman. There is no explanation why he was singled out in order to accommodate Shri Rajesh Kumar Chaubey. Therefore, management's evidence which finds corroboration from documents evidence appears to be far more reliable than the evidence of the workman. I therefore, believe the management case that from 19-10-84 he went on leave for 4 days for which he took oral permission from Mohd. Qayum Sub Inspector (T).

18. The next important question which requires determination is whether the workman left the job of his own or he came back thereafter to resume duty.

19. In para 5 of his statement in cross examination, the workman has deposed that when till 25-10-84 nothing came out, he went back home. Soon thereafter he said that thereafter he did not come back to Shahjahanpur. However, he immediately changed and said that he visited Shahjahanpur on 1-12-84 and after 2 or 4 days he went back home. As stated by me above, in order to prove that letter dated 26-10-84, 16-1-85 and 8-3-85 were written by him, he has not filed certificate of posting and postal receipts of registration. He has also not filed the copy of notice dated 26-3-85 u/s 80 C.P.C., the receipt of which is admitted by the management. The management too has not filed the original notice. Atleast this notice would have shown as to when representations in the past were made by him to the authorities concerned.

20. Annexure V to the affidavit dated 16-8-88 of the workman is said to be the copy of application dt. 19-8-86 made by the workman before ALC(C) Dehradun. In this he has made reference to his sending his application on 16-1-85 under certificate of posting to SDO (T) Shahjahanpur and Divisional Engineer (T) Sitapur, registered letter dated 9-2-85 to Up Mandal Adhikari (T) Shahjahanpur. Registered Letter dated 8-3-85 to Divisional Engineer (T) Sitapur, letter dated 12-3-85 to Hon'ble Minister for Information and notice u/s 80 C.P.C. dated 26-3-85.

21. Whatever may be said about lapses on the part of the workman in establishing his case, atleast from the notice under section 80 C.P.C. dated 26-3-85, one thing can be inferred that such a notice would have been given by him only when nothing had come out on his earlier written representation. All that we cannot say is as to actually when these oral or written representations were made by the workman. In the circumstances he cannot be said to have abandoned the job. There is one more circumstances which lends support to the above view. In para 2 of the written statement it is pleaded by the management that 18 days wages of the month of October, 1984 of the workman were remitted by money order to the workman at his home address on 7-11-84. There is no documentary evidence from the side of the management to show that while remitting the amount it was stated that since after taking 4 days casual leave he had not turned up, it was being presumed that he had abandoned the job. Further under section 25F he was entitled to notice, or notice pay besides retrenchment compensation. At least retrenchment compensation to which he was entitled should have been remitted to him.

21. In the circumstances having worked continuously for more than one year and in view of non-compliance of provisions of section 25F I. D. Act, the termination of the services of the workman w.e.f. 19-10-84 cannot be held as legal and justified. Since there is no evidence as to when workman came back after going on leave w.e.f. 19-10-84 I allow him back wages w.e.f. 1-1-85, of course with continuity of service w.e.f. 19-10-84. He shall be reinstated.

22. Reference is answered accordingly.

ARJAN DEV, Presiding Officer  
[No. L-40012/43/86 D-II(B)]

का. आ. 1342—औद्योगिक विदाद प्रधिनियम, 1947 (1947 का 14) की आरा 17 के अनुसरण में, केन्द्रीय सरकार टेलीकम्युनिकेशन (माइक्रोवेव प्रोजेक्ट) मुरादाबाद के प्रबन्धतंत्र से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विदाद में केन्द्रीय सरकार औद्योगिक प्रधिकरण, कानपुर के पक्षपात को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-5-89 को प्राप्त हुआ था।

S.O. 1342.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telecommunication (Microwave Project), Muradabad and their workmen, which was received by the Central Government on the 12-5-89.

#### ANNEXURE

BEFORE SHRI ARJAN DEV PRESIDING OFFICER  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
KANPUR

Industrial Dispute No. 130 of 1988

In the matter of dispute :

#### BETWEEN

Shri Kartar Singh Driver,  
C/o Meharaj Singh,  
Near P.A.C Naya Gaon,  
Moradabad. U.P.

#### AND

The Divisional Engineer,  
Microwave Project,  
Lajpat Nagar,  
Moradabad. U.P.

#### AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-40012/22/87-D.II(B) dated 11-10-88

has referred the following dispute for adjudication to this Tribunal;

Whether the action of the management of Telecommunication Department in relation to their establishment of Microwave Project Moradabad in terminating the services of Shri Kartar Singh Driver w.e.f. 23-11-85 (A.N.) is justified? If not, to what relief the workman is entitled to?

2. The workman's case in brief is that he joined the services in the Microwave Project, Moradabad under the Divisional Engineer, Microwave Project Moradabad, on 20-8-82 as a Truck Driver. In November, 1985, a false allegation was made against him that he was involved in an accident as a result of which a person received injuries; that he was arrested by the police but was got released by the Assistant Engineer, Shri Ram Araj; and that the accident took place on account of his being under the influence of liquor. As a result of the said false allegation he was denied duty w.e.f. 23-11-85. He alleges that thereafter he made repeated requests for allowing him to resume duties but in vain. Ultimately he gave a registered notice on 27-1-86 and in reply to the said notice he was informed that his services had been terminated w.e.f. 23-11-85 due to his aforesaid carelessness, negligence and unabecoming conduct. According to the workman he was never given any Cargosheet nor any departmental inquiry was held against him in respect of the alleged accident. As such the order terminating his services is illegal. He is therefore, entitled to reinstatement with continuity of service and with full back wages.

3. On behalf of the management written statement has been filed by the Divisional Engineer, Telecom., Microwave Project Moradabad. It is pleaded that the workman was selected for deployment as a casual driver in the Division on 4-2-82. On workman's request dt. 15-3-83, copy annexure 1, his services were terminated w.e.f. 23-3-83 vide office order, copy annexure 2. Thereafter, whenever he came for work, if a vehicle happened to be available, he was engaged strictly on daily wages. It is further pleaded that the workman's behaviour with the staff was not good. He was reprimanded several times but every time he gave the assurances that he would not give any cause for complaint any further. On 23-11-85, he rammed the Truck which he was driving in a rickshaw carrying 3 persons one of whom sustained injuries. He was taken in police custody, but on the intervention of the officials of the department he was let off by the police after stern warning. Copy of the report of the Microwave Project Moradabad regarding the said accident is annexure IV. Keeping all those in view it was found that the workman was not suitable for deployment any more. Since the work of the project is confined to hills of Kumaun and Garhwal Regions which have serpentine roads with steep gradients, it is not safe to engage the workman any more keeping in view the safety of the lives of the government officials and the Govt. property.

4. In support of his case the workman has filed his own affidavit and a number of documents. On the other hand, in support of their case, the management filed the affidavit of Shri G. C. Srivastava, Divisional Engineer, but examined Shri Ram Araj, the Assistant Engineer, while adducing evidence. The management also relied upon a number of documents.

5. Ext. M-3 and M-4 are the copies of reports dt. 11 and 24-11-85, respectively, the former by driver Ram Autar and Driver Sher Singh and the latter by Tech. Shishu Pal with regard to the accident of Truck No. DHL 780 driven by the workman against a rickshaw rashly causing injuries to 2 persons going on the said rickshaw, arrest of the workman by the police of police station Civil Lines, Moradabad, and workman's release on bail.

6. Ext. M-11 is the copy of order dt. 24-11-85, passed by Shri Ram Araj Assistant Engineer terminating his services on account of the said accident and his past misconduct.

7. It has been admitted by the management witness in cross examination that in respect of the misconduct of chargesheet was given to the workman nor any regular inquiry was conducted by the department against him. We have, therefore, to see whether or not in the absence of any departmental inquiry proceedings, the services of the workman could have been terminated by the management specially when the alleged accident is denied by the workman.

8. Ext. W-16 is the copy of statement showing the period during which the workman had worked from the beginning of his service in the Microwave Project, Moradabad. The statement has been admitted by the management. It shows that in 1985 upto 23-11-85 he had worked for 232 days. In December, 1984 he had worked for 31 days. It means that during the period of one year preceding the date of termination of his services he had worked for 263 days. In other words before the date of termination of his services he had worked continuously for one year within the meaning of section 25F I.D. Act. His services could have been terminated had compliance of section 25F been made by the management. In the instant case, the management has not made the compliance of section 25F I.D. Act, as has been admitted by the management witness. In his cross examination he has said that the workman was neither given any notice or notice pay nor was paid any retrenchment compensation.

9. The order of termination of workman's services is, therefore void ad initio. It is illegal even otherwise as the order of termination against the workman casts stigma in the absence of any departmental proceedings that he is guilty of misconduct.

10. Hence, it is held that the action of the management of Telecommunication Department in relation to their establishment of Microwave Project Moradabad in terminating the services of Shri Kartar Singh Driver w.e.f. 23-11-85 (A.N.) is not justified. He is, therefore, entitled to reinstatement with continuity of service with full back wages and other consequential benefits subject to his producing an affidavit to the effect that he was not gainfully employed anywhere else during the period when he was out of job.

11. Reference is answered accordingly.

ARJAN DEV, Presiding Officer,  
[No. L-40012/22/87-D.II(B)]

का. आ. 1343.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, फेद्रीय सरकार रेलवे मेल सेविस 'जे' विभाजन अजमेर के प्रबन्धालय से सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुसंधान में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकारण, जयपुर के पंजपट को प्रकाशित करती है, जो फेद्रीय सरकार को 16-5-89 प्राप्त हुआ था।

S.O. 1343.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Railway Mail Service, 'J' Division, Ajmer and their workmen, which was received by the Central Government on the 16-5-89.

केन्द्रीय औद्योगिक स्वायाधिकरण, जयपुर

क्रम नं. सी.आई.टी. 29/88

फैक्टरेन्स: केन्द्रीय सरकार, श्रम मंत्रालय नं. दिल्ली की अधिसूचना मेंमा  
पंज. 40012/8/87- दी. II (बी) दिनांक 6-5-88

श्री सोहन लाल अग्रवाल मार्फत श्री रामेश्वर लाल दूधवाला  
उदार धासेरी, अजमेर। प्रार्थी पत्र

## वनाम

सुपरिष्टेण्ट, आर. एम. एम. "जे" डिवीजन, अजमेर—  
नियोजक पक्ष

## उपस्थिति

प्रार्थी पत्र की ओर से : श्री बी. एम. बागड़ा एवं प्रार्थी स्वयं  
नियोजक पक्ष की ओर से : कोई हाजिर नहीं

अयपुर 13 नवम्बर 1988

## प्रार्थी

भारत सरकार, अग्र मंत्रालय के डेस्क प्राफिसर ने उनकी अधिकृतता  
संख्या ए.ल. 40012/8/87-डी II-(बी) दिनांक 6-5-88, निम्न  
विवाद इस न्यायाधिकरण के अंतर्गत धारा 10(1) (डी) के उपाय 2  
(ए) और्योगिक विवाद अधिनियम, 1947 जिसे तत्कालीन अधिनियम  
विख्या जाएगा, वास्ते अधिनियमित्य घोषित किया है।

"Whether the action of the management of R.M. J  
Division, Ajmer in terminating Shri Sohan Lal  
Agarwal, ex-Tiffin pay from service with effect from  
3-12-86 is legal/justified? If not, to what relief the  
workman concerned is entitled and from what date?"

बाद प्राप्ति इस रेफरेंस को इस न्यायाधिकरण में पंजीकृत किया  
गया और उभय पक्षकारों को नोटिस जारी किये गये। नोटिस  
में पक्षकाता प्रार्थी सोहन लाल अग्रवाल स्वयं उपस्थित आया जिसे आज  
अपना स्टेटमेंट आफ कलेण प्रस्तुत करना था। मप्रार्थी अधीक्षक, आर.  
एम. एम. जे डिवीजन, अजमेर पर इस न्यायाधिकरण द्वारा जारी की  
गई नोटिस बी. लामील 10-10-88 को हो चुकी है, मगर बाबूजूद  
नोटिस प्राप्ति के बहु उपर्याप्त नहीं आया है। प्रार्थी सोहन लाल ने  
उसके अधिकृत प्रतिनिधि श्री बी. एम. बागड़ा के द्वारा एक प्रार्थना पत्र  
इस आवश्यकता का प्रस्तुत किया कि व्यापारिक केन्द्रीय सरकार द्वारा उनकी  
सेवा समाप्ति का मामला इस न्यायाधिकरण को निर्देशित किया गया है।  
मगर उनकी सेवा समाप्ति का विवाद केन्द्रीय सर्विय दिव्युति, जोधपुर  
के समक्ष पेश बर रखा है, जो विवारण्यात है और वह वही से राहा  
चाहाहा है। ऐसी परिस्थिति में यह न्यायाधिकरण सौन्दर्य विवाद के  
सम्बन्ध में कोई कार्यवाही भागे न कर तो इस्ट्रूट अवार्ड पारित कर  
दें।

श्री सोहन लाल अग्रवाल को श्री बी. एम. बागड़ा ने जिनावत  
किया है। जूँकि उनकी सेवा समाप्ति के सम्बन्ध में मामला केन्द्रीय  
सेवा न्यायाधिकरण, जोधपुर पर समक्ष जेरकार है और वह वही से  
प्रस्तुतीय प्राप्ति करना आहता है। भोजपुर विवाद को आगे न चला कर  
प्रार्थी ने कोई विवाद नहीं का पंचान्त पारित बरते की प्रार्थना की है।  
विधकी की ओर ने नोटिस प्राप्ति के बाबूजूद भी कोई उत्तरण नहीं  
है, न ही किसी प्रकार वा प्रारंभ उनकी ओर से उत्ताया गया है। इन  
सभी परिस्थितियों को देखते हुए इस रेफरेंस के सम्बन्ध में तो इस्ट्रूट  
अवार्ड पारित करना जारा है।

अवार्ड आग दिनांक 15-11-88 को पारित किया गया और  
अदालत में पहुँच कर मुदाया गया। अवार्ड नियमनुगार फैसले ग्रहकार को  
वास्ते प्रकाशन भेजा गया।

प्राप्ति मिस्र यादव, न्यायाधीश

[नं. एम. -40012 / 8 / 87 डी -II (बी)]

का. आ. 13-44—और्योगिक विवाद अधिनियम, 1947  
(1947 का 14) की धारा 17 के प्रत्युतरण में, केन्द्रीय सरकार श्री

दर्शन, कुमार और अन्य द्वारा, धारा 33ए के तहत, सेन्ट्रल रेलवे  
के प्रबन्धसंकार से सम्बद्ध नियोजकों के बिल्ड एक विकायत पर अनुबंध  
में तिदिष्ट केन्द्रीय सरकार और्योगिक अधिकारण, कानपुर के पंचानग को  
प्रकाशित करती है, जो केन्द्रीय सरकार की 12-5-89 प्राप्त हुया था।

S.O. 1344.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur in respect of a complaint u/s 33A of the said Act filed by Sh. Darshan Kumar and others against the management of Central Railway, Jhansi which was received by the Central Government on 12-5-89.

## ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
PANDU NAGAR, KANPUR, U.P.

Industrial Dispute No. 75 of 1987

In the matter of dispute

## BETWEEN

Shri Darshan Kumar Kaushik & others,  
C/o. Shri Surender Singh,  
2/336 Namneir Agra

## AND

Divisional Railway Manager (P),  
Central Railway Jhansi, U.P.

## AWARD U/s. 33-A I.D. Act

1. This is an application under section 33-A I.D. Act, filed by Shri Surender Singh, the authorised representative for the workmen with the affidavit of Shri Mahavir Prasad son of Shri Nanua Ram.

2. Facts of the case appear in the affidavit of Shri Mahavir that during the pendency of I.D. Case No. 69/86 the Railway Administration in violation of the provisions of section 33 and 25F I.D. Act, terminated the services of—

1. Shri Nathi Lal son of Sh. Amar Singh
2. Shri Dhani Ram son of Sh. Mohar Singh
3. Shri Bhikh Chand son of Sh. Havo
4. Shri Puran son of Sh. Giriraj
5. Shri Raddhey Shyam s/o Sh. Beeda
6. Shri Ashok Kumar s/o Brij Kishore
7. Shri Khubi son of Shri Maida
8. Shri Ramesh Chandra S/o Jagannath
9. Shri Nihal son of Shri Yadram
10. Shri Mahavir son of Sh. Nanua Ram

w.e.f. 19-5-87. It is further alleged that the Railway Administration has not paid them arrears of wages on the basis of 4th Pay Commission report. It is, therefore, prayed that the above named workmen in question be ordered to be reinstated in service.

3. The case is contested by the Railway Administration. The Railway Administration has flatly denied the case set up by the workmen through their authorised representative. According to the Railway Administration, they have not done anything against the interest of the workmen during the pendency of I.D. No. 69/86.

4. From the side of the workmen rejoinder has also been filed and in para 3 of the rejoinder the names of the following six workmen have also been added—

1. Shri Beeda.
2. Shri Mazed.

3. Shri Bachhoo.  
 4. Shri Ramesh Chand.  
 5. Shri Mohan and  
 6. Shri Barkat.

5. In support of their case the workmen has relied on the affidavit of Shri Mahavir son of Shri Nanu Ram. From the side of the management no evidence has been led.

6. I have gone through the evidence on record and have examined the record of I.D. No. 69/86. To me the application under section 33A appears to be misconceived.

7. I.D. 69/86 as per reference order related to the 11 workmen. Shri Ramesh Chand son of Shri Jagannath named in the affidavit accompanying the petition under section 33A I.D. Act is not the same, Ramesh Chand who has been named in the reference order of I.D. No. 69 of 86. In I.D. 69/86 the workmen filed the affidavit of Shri Ramesh Chand son of Devi Ram and it was he who was examined and cross examined in the said case. The second man Ashok Kumar son of Shri Brij Kishore named in the affidavit of Shri Mahavir also does not appear to be Shri Ashok Kumar Pathak named in the reference order. It has not been shown that both are one and the same person. The other workman named in the affidavit of Shri Mahavir do not find mention in the reference order. Even the name of S/Shri Beeda, Mazed, Bachho, Mohan Singh and Barkat do not find place in the reference order. The other Ramesh Chand named in para 3 of the rejoinder happens to be the same person of the same name referred to in the reference order or not has not been proved. In his cross examination Shri Mahavir has deposed that he does not know the name of all the 16 persons of case. He has further stated that the Railway Administration has terminated the services of the 16 workmen before the moving of application before ALC(C). If it were so the fact deposed to by him in para 3 of his affidavit that their services were terminated with effect from 19-5-87 cannot be believed. If their services were terminated before the moving of application before ALC(C), the question of violation of the provisions of section 33 I.D. Act does not arise at all.

8. In the circumstances, the application under section 33A I.D. Act is liable to be rejected.

9. The application under section 33A I.D. Act is hereby rejected.

ARJAN DEV, Presiding Officer  
 [No. L-13011/2/89-IR(DU)]

का. आ. 1345--श्रीधर्मिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय भरकार सोगिक विवरणमें देहरादून के प्रबन्धतंत्र से सम्बद्ध नियोजकों को उत्तर कर्मकारों के बीच अनुबंध में निर्दिष्ट श्रीधर्मिक विवाद में केंद्रीय भरकार श्रीधर्मिक अधिनियम कानपुर के पंचाट को प्रकाशित करती है जो केंद्रीय गवर्नर को 12-5-89 को प्राप्त हुआ था।

S.O. 1345.—in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Logging Development Dehradun and their workmen, which was received by the Central Government on 12-5-89.

#### ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,  
 CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL,

KANPUR

Industrial Dispute No. 47 of 1987

In the matter of dispute between

Shri R. D. Tyagi  
 Secretary  
 Bharatiya Mazdoor Sangh

32 Chakrata Road  
 Dehradun U.P.

Petitioner

AND

The Chief Dehradun Centre LDI  
 Logging Development Institute  
 Kalagarh Road  
 Dehradun U.P.

—Management

#### AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-42011/14/85-D.II(B) dt. 23rd March 1987, has referred the following dispute for adjudication to this Tribunal:

Whether the action of the management of Logging Development Dehradun in terminating the services of S/Shri Bachiram, Anil Kumar, Puran Singh is legal and justified? If not to what relief the concerned workmen are entitled to and from what date?

2. The case of the above named three workmen is that their services were terminated without notice, malafide and illegally w.e.f. 9-5-85 without any reason in violation of the standing orders when juniors were still working they are therefore, entitled for reinstatement with continuity of service and back wages.

3. In defence the management plead that the 3 workmen were retrenched as surplus employees in accordance with the prescribed rules and procedure. At the time of retrenchment they were junior most casual daily workers. According to the management they were served with notices of termination and in the said notices reasons for termination of their services were given. The posts on which they were engaged ceased to exist after 9-5-85. They were engaged for a particular job for specific period. As a matter of fact prior to March 85 the Institute was housed in 5 rented buildings and for an effective round the clock watch and ward of the five rented buildings chowkidars were employed on casual daily basis. As soon as the building of the Institute was constructed and the institute shifted into it in May 1985 several chowkidars who were working on casual daily basis became surplus, and consequently the 3 workmen who happened to be junior most were retrenched from service in accordance with the provisions of the I.D. Act, 1947. The management deny that there is any illegality in the order of termination of their services.

4. The workmen have filed rejoinder, but in it they have alleged no new fact.

5. In support of their case the workmen filed the affidavit of Shri Anil Kumar one of the workmen in question, and in support of their case, the management filed the affidavit of Shri A. K. Jain an officer in the Logging Development Institute Dehradun. Both sides have relied upon a number of documents filed by them.

6. Ext. M-2 is the copy of the seniority list. Its formal proof has been waived by Shri Bhupender Singh the authorised representative for the workmen. The names of S/Shri Bachiram Puran Singh and Anil Kumar appear at serial nos. 9, 10 and 11 respectively and all of them have been shown as having been appointed initially on 25-3-83. The list consists of 13 persons. Persons named at serial No. 12 and 13 are S/Shri Kedar Nath and Rajesh Kumar respectively whose dates of appointment are given as 23-7-83 and 23-8-83 respectively. It has been stated by the management witness in his cross examination that the services of these two persons were also terminated w.e.f. 9-5-85. I may state here that this seniority list is of persons who had been working as chowkidars as on 1-4-85.

7. In his cross examination, the management witness has deposed that all the 3 workmen of this case were given breaks of one day in service after every 3 months. These breaks therefore will be treated as artificial. He has further

stated that since the date of their appointment they had continuously worked till 8-5-85. There is no reliable documentary evidence from the management's side to show that they had been engaged from time to time for specific periods so as to attract the provisions sub clause (bb) of clause (oo) of Sec. 2 of the I.D. Act. Having rendered services for more than one year continuously before retrenchment, they were entitled to one month's notice or notice pay and retrenchment compensation u/s. 25F I.D. Act.

8. Ext. M-1 is the copy of notice dated 9-4-85, given by the management to 10 chowkidars including 3 workmen in question. It also shows that copies of notices were also endorsed to these three workmen. Its formal proof has been waived by the Authorised Representative for the workmen. In the circumstances, the mere denial on the part of the workmen that they were not given any notice is of no avail. In his cross examination, the management witness has admitted that no retrenchment compensation was paid to the three workmen in question at the time of termination of their services. In view of non compliance of this mandatory condition, the order of termination of the 3 workmen becomes void ab initio. Accordingly it is held as illegal.

9. As a general rule in view of the order of termination being illegal, the three workmen in question are entitled to reinstatement. But in the present case the facts appears to be different. According to the management, the services of these three workmen who were working as chowkidars were dispensed with as they had become surplus on account of the shifting of the office into the new building constructed by the management. The management witness in his cross examination at page 3 has deposed that no new chowkidars had been kept by the management after 9-5-85.

10. In his cross examination Shri Anil Kumar one of the workmen, has deposed that upto May, 1985, the Office of Logging Development Institute were situated in different buildings and in every such building there was a separate chowkidar. He has further deposed that in May, 1985, the building of the Institute became one and the different buildings in which the offices of the institute were previously situated were vacated as these offices shifted to the new building. At page 2 of his cross examination he has said that after the shifting of the different offices of the Institute into one building the services of the several chowkidars like him were terminated. Thus from the own statements of one of the workmen, namely, Shri Anil Kumar the case of the management stands proved, on this point.

11. The question is whether at the time of their retrenchment any chowkidar junior to them was retained in service or not. There is no cogent evidence from the side of the workmen on this point. Rather from the evidence of the management witness it becomes clear that the two chokidars, namely, S/Shri Kedar Nath and Rajesh Kumar, who were junior to them, their services were also terminated by the management w.e.f. 9-5-85.

12. In para 4 of his affidavit Shri Anil Kumar, has stated that after the termination of their services the management re-engaged Shri Mitranand and others who were junior to them. The name of Shri Mitranand does not find place in the seniority list copy Ext. M-2. Who were others has not been clarified by the workmen witness. We have to see whether in the category to which the workmen belonged any person junior to them was reappointed or not. There is no cogent evidence on this point from the side of the workmen.

13. At the time of arguments, on behalf of the workmen, Shri Bhupender Singh, authorised representative for the workmen filed two documents, one copy of the order dt. 10-3-88 of the Hon'ble Supreme Court in Civil Writ Petition No. 1351 of 1987, Rakesh Kumar Soni and others Vs. Ministry of Environment and Forest and Wild Life and others and copy of order dt. 14-10-88 of D. Registrar Van Anusandhan Sansthan Avam Mahavidyalaya.

14. Document No. 1 purports to be the copy of certified copy of the order. From the order it appears that before the Hon'ble Supreme Court it was not disputed that the petitioners had been working in the establishment for more than 4 to 5 years. The Hon'ble Supreme Court, therefore, directed the opposite party to absorb them on regular basis with the further direction that if there had been any other similarly situated employees senior to the petitioners they should be given the same benefit. The copy of the Civil Writ Petition has not been filed. Had it been filed it would have shown as to who were the petitioners and in what capacity they had been working as daily rated employees. In the light of seniority list copy Ext. M-2 it was also then possible to see whether any of the petitioners in the writ petition was junior to workmen in question. In fact at the time of filing of these documents it was suggested to the authorised representative for the workmen that if he thought it proper then he could seek proper amendment in the claim statement and that the Tribunal was prepared to reopen the case even at this very late stage. But for reasons best known to him he did not avail the opportunity given to him. During the course of arguments my attention was invited to persons named at serial no. 190 and 191 of document no. 2. Their names are Jai Prasad and Chandra Mani. From the seniority list copy Ext. M-2 it is evident that their dates of appointment are 28-2-80 and 15-10-81. It therefore means that both of them were senior to the workmen in question. Document no. 2 in fact refers to the office order about the appointment of the persons named on temporary basis in the pay scale of Rs. 750-12-870-EB-14-940.

15. We have found above that on the shifting of the various offices of the management into one building several chowkidar including workmen in question became surplus. We have further found that no chowkidar junior to workmen in question was retained in service. We have also seen that no chowkidar junior to the workmen were reappointed after 9-5-85. In the circumstances reinstatement of their services cannot be ordered but only compensation can be awarded to the workmen in question when there no longer exists any vacancy of chowkidar.

16. Looking to the facts and circumstances of the case, these three workmen are awarded a sum of Rs. 10,000 each as compensation instead of reinstatement.

17. Held, therefore, that the action of the management of Logging Development Institute, Dehradun, in terminating the services of S/Shri Bachiram, Puran Singh and Anil Kumar is neither legal nor justified. Since no post of chowkidar is available with the management each of them is held entitled to a sum of Rs. 10,000 as compensation.

18. Reference is answered accordingly.

ARJAN DEV, Presiding Officer  
[No. L-42011/14/85-D.II(B)]

का. अ. 1346—आंशिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में फैन्ड्रेयर मरकार प्रासिल्टेण्ट इंजीनियर उत्तर रेलवे कानून के प्रबन्धन से गन्तव्य नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट आंशिक विवाद में संलग्न यरकार आंशिक योधकरण, कानून के नियान को प्रकाशित करती है, जो फैन्ड्रेयर मरकार को 12-5-89 प्राप्त हुआ था।

S.O. 1346.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Asslt. Engineer Northern Railway, Kanpur and their workmen, which was received by the Central Government on 12-5-1989.

## ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING  
OFFICER, CENTRAL GOVERNMENT INDUS-  
TRIAL TRIBUNAL CUM-LABOUR  
COURT, KANPUR, U.P.

Industrial Dispute No. 115 of 1987  
In the matter of dispute between

Shri R. D. Tiwari Zonal Working President  
Uttar Railway Karamchari Union Soshan  
Bajaj Lane Samosh Ganj Lucknow.

PETITIONER

AND

The Divisional Railway Manager Northern Rail-  
way Allahabad.

Opp. PARTY

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-41012/48/96-D.II(B) dated 24th August, 1987, has referred the following dispute for adjudication to this Tribunal :

Whether the action of the Assistant Engineer Northern Railway, Kanpur in removing Shri Jagrup Gangman, under E.W.I.III, N.R., Kanpur from service w.e.f. 10-2-83 is legal and justified? If not, to what relief the workman concerned is entitled?

2. The admitted facts are that on the basis of F.I.R. lodged against the above named workman u/s. 332 I.P.C. at P. S. Puhi, Kanpur Nagar, for alleged beating by him of Shri R. P. Verma, I.O.W. the workman was suspended by P.W.I Head Quarter on 7-1-83. Thereafter, he was served with a memo dt. 12-1-83 issued by the Assistant Engineer Head Quarter in respect of the alleged occurrence to show cause why the penalty of removal from service be not imposed on him. The workman in his reply denied the charge but being not satisfied with his reply the Asstt. Eng. Head Quarter by his order dt. 10-2-1983 served on the workman on 28-2-83, terminated his services

3. The workman's case is that he had not given a beating to Shri R. P. Verma, IOW In respect of which FIR was lodged against him at P.S. Juhi, Kanpur Nagar. According to him in the criminal case which was registered on the basis of F.I.R. after investigation he was acquitted by M. M. Juhi, by his order dated 26-3-1985. On 27-4-1985 and 28-5-1985, he applied for being taken back on duty but to no effect. He has also alleged that against the order of removal from service he filed an appeal before the Sr. Divisional Engineer but he has not been informed so far about its result. According to him the order of removal from service without conducting any inquiry against him is bad in law. Hence, he is entitled to reinstatement with continuity of service and full back wages.

4. The case set up by the management in defence is that while working as Gangman under P.W. 1. Head Quarter Kanpur it was noticed that the workman was making encroachment on railway land by

putting up an unauthorised hut in front of Clock No. 3 in Military Camp Colony, Kanpur, Sr. Engineer by his letter dt. 15-9-1982 directed the workman to remove the unauthorised structure immediately. When the workman did not obey the order, Shri R. P. Verma, IOW was deputed to do the needful. On 7-1-1983 at about 1.30 p.m. when the said IOW alongwith Shri Gyan Singh, and Amrit Lal Khatasi reached the spot, he found the workman plastering the tattar walls of the hut unauthorisedly built by him with mud. When Shri R. P. Verma asked the workman to stop working on the illegal construction, the workman with his sons and associates gave a beating to Shri R. P. Verma with lathis causing serious head injuries. He was therefore, suspended, issued memorandum and finally removed from service. The management plead that no appeal alleged to have been filed by the workman appears to have been received by Sr. Divisional Engineer. Order to removal from service having been passed under Rule 14(ii) of the Railway Servants (Discipline & Conduct) Rules, 1968, the Court has no jurisdiction to sit in review or in appeal against the said order of removal from service.

5. The workmen filed a rejoinder also but in it he has alleged no new facts.

6. In support of his case the workman has filed his affidavit and the management have filed the affidavit of Shri O. P. Saxena P.W. 1. Both the sides have also relied on documentary evidence.

7. It is the admitted case of the parties that in respect of the alleged occurrence of 7-1-1983, in the criminal case the workman was acquitted of the charge u/s 332 I.P.C. This is also proved from the copy of the judgment dated 26-3-1985 of Metropolitan Magistrate, Juhi Kanpur Nagar filed by the workman.

8. Annexure IV to the affidavit of the management witness, is the copy of memo dated 12-1-1983, given by Asstt. Engineer Head Quarter to the workman to show cause why the penalty of removal from the service be not imposed on him in view of Head Injuries inflicted by him with his associates on Shri R. P. Verma. In the memorandum it was stated that the action of the workman was such as to render his further retention in public service undesirable. It was further observed that he was not a fit person to be retained in service and hence a notice in exercise of the powers conferred by Rule 14(ii) of the Railway Servants Disciplinary & Appeal) Rules was being given.

9. Annexure VI to the said affidavit is the copy of order dated 1-2-1983 by means of which after considering the workman's reply dated 14-1-1983 to the memorandum issued to him. The Assistant Engineer Head Quarter removed him from service after holding that he was convinced that it was not necessary to hold DAR Inquiry into the case as there was enough evidence on record to show that the workman was guilty of the charges levelled against him.

10. Rule 14(ii) reads as under :

"Notwithstanding anything contained in Rules 9 to 13, where the disciplinary authority is satisfied for reasons to be recorded by it

in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, the Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit.

It has been argued by Shri Bhupender Singh, authorised representative for the workman, that the order of removal from service is illegal as the workman was not afforded any opportunity of explanation or hearing before the passing of the said order. In support of his contention he has placed reliance on the ruling in the case of *Shri Bankey Behari v. Union of India and others* 1984 IC 690 Alld (DB). After placing reliance on the ruling in the case of *Inder Deo Singh v. Union of India* 1977 Lab. IC 105 and some more rulings. Their Lordships held that while acting under Rule 4(ii) of the Rules Disciplinary Authority must comply with the principles of natural justice and it must give opportunity to the railway servants before inflicting penalty. This ruling is not helpful to the workman as in the present case it is even admitted to the workman that he was served with memo copy annexure IV to the affidavit of management witness. By means of this memo the workman was given an opportunity of making representation within 15 days of the receipt of it on the proposed penalty of removal from service.

11. In fact in my opinion, the order of removal from service cannot be sustained on another vital point. Rule 14(ii) clearly lays down that Disciplinary Authority must be satisfied that it is not reasonably practicable to hold an inquiry against the delinquent in the manner provided for in the rules and that these reasons are to be recorded in writing. All that has been stated in the memorandum is that the action of the workman in inflicting head injuries on Shri R. P. Verma with his associates was such that it was not desirable to retain him in service. In the final order dated 10-2-1983, the Asstt. Engineer Head Quarter observed that having fully applied his mind to the facts of the case, he was convinced that it was not necessary to hold BAR inquiry into the case as there was enough evidence on record to show that the workman was guilty of the charges levelled against him. I think these are not the reasons contemplated by rule 14(ii). In this connection I would like to refer to the ruling in the case of *Smt. Sandhya Pathak Versus Union of India* 1988 Lab IC 1588 (Alld) (DB). In this case Rule 30(II) of National Textile Corporation U.P. Limited Employees Conduct (Discipline & Appeal) Rules 1975 which is in Pari materia with Article 31(2) of the Constitution was considered. It was held that where no witness is ready to come forward because of undue influence and pressure exercised by delinquents upon them and on conduct of threats given to Inquiry Officer, it is not reasonably practicable to hold enquiry, removal of delinquent from service in such cases will be proper. In para 7 of the ruling at pages 1530 and 1531, the ruling given by the Hon'ble Supreme Court in the case of *Satyavir Singh v. Union of India* 1986 Lab IC 1, has been referred. In the said case the Hon'ble Supreme Court referred to situations in which it would not

be reasonably practicable to hold a inquiry. For instance where a civil servant himself or with his associates so terrorizes the witnesses that they are not prepared to give evidence or where the civil servant himself or with his associates intimidates and so terrorizes the officer appointed to hold inquiry that he is afraid to hold inquiry or where an atmosphere of violence or of general indiscipline and insubordination prevails it being immaterial whether the civil servant is or is not a party to bringing about such situation. To my mind as has been held by the Hon'ble Supreme Court these are the circumstances where it can be said that it is not reasonably practicable to hold an inquiry in the manner prescribed.

12. In the instant case there is no such evidence from the side of the management nor any such inference can be drawn from the memorandum and the final order of removal from service. Rather it appears that the version of Shri R. P. Verma was taken as correct on the face of it. Besides we have seen that the workman has been acquitted in the criminal case.

13. Hence, in the circumstances, the order of removal from service dated 10-2-83, cannot be upheld. It is an illegal order.

14. It is, therefore, held that the action of the Assistant Engineer N. R. Railway Kanpur in removing Shri Jagroop Singh from service w.e.f. 10-2-1983 is neither legal nor justified. Accordingly the workman is held entitled to be reinstated in service with continuity of service and with full back wages.

15. Reference is answered accordingly

ARJAN DEV, Presiding Officer  
[No. L-41012/48/86-D.II(B)]  
HARI SINGH, Desk Officer

नई दिल्ली, 26 मई, 1989

का. आ. 1347—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबन्धतात्रे के संबंध नियोजकों और उनके कर्मकारों के बीच भ्रष्टाचार में निविष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण नं. 1, घनवाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-5-89 को प्राप्त हुआ था।

New Delhi, the 26th May, 1989

S.O. 1347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the Allahabad Bank and their workmen, which was received by the Central Government on the 15-5-89.

## ANNEXURE

BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD  
In the matter of a reference under section 10(1)(d)  
(2A) of the Industrial Disputes Act, 1947.

Reference No. 2 of 1988.

## PARTIES :

Employers in relation to the management of  
Allahabad Bank.

AND

Their Workmen.

## APPEARANCES :

For the Employers—Shri Shrikant, Law Officer.

For the Workmen—Shri S. K. Tiwary, President,  
Bihar State Allahabad Bank Employees' Union (NCBE).

STATE : Bihar.

INDUSTRY : Bank.

Dated, the 28th April, 1989.

## AWARD

By Order No. L-12011/40/87-D.II(A), dated, the 29th January, 1988, the Ministry of Labour, Government of India, has in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal.

“Whether the action of the Allahabad Bank in placing Shri S. N. Tiwari, Clerk, Bokaro Steel City Branch, junior to others (appointed later in clerical cadre) on the basis of settlement dated 22-1-1983 to which his Union is not the party, is justified ? If not, to what relief the concerned (and other such members of the Bihar State Allahabad Bank Employees Union, not party to the settlement) entitled to?”

2. The case of Allahabad Bank as appearing from the written statement-cum-rejoinder submitted by it, details apart, is as follows :

Allahabad Bank is nationalised Bank having its Head Office at Calcutta, Zonal Office at Patna and Regional Office at Ranchi. The functioning of the Bank is governed by laws of the land, the Awards and the Bi-partite Settlements in force. Settlement was arrived at between the Bank and the recognised union, namely, All India Allahabad Bank Employees' Co-ordination Committee in 1975. This settlement is binding on all the workmen of the Bank. Bihar State Allahabad Bank Employees' Union (National Confederation of Bank's Employees—shortly referred to as N.C.B.E.) has no locus standi to challenge it now after 13 years. Another settlement dated 22-1-83 was arrived at between the Bank and the recognised union. After the expiry of first settlement of 1975 a second settlement was arrived at between the Bank and its recognised union, namely, All India Allahabad Bank Employees Co-ordination Committee

on 22-1-83. This settlement is valid as it has been made under section 18 of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957. The settlement is a rightful one and the benefits thereunder have been enjoyed by all the award staff including the members of disputant union, namely, Bihar State Allahabad Bank Employees' Union. As per provisions of the settlement dated 22-1-83 seniority list is prepared in terms of para 2 of clause 5 from time to time and circularised to all the Branches/Offices in the system for information of the employees. The Bank published a seniority list as on 31-12-84 and as on 31-12-85. The seniority list is prepared on the basis of norms provided in Clause 1 of Pt. V of the settlement dated 22-1-83 which runs as follows :

- “(d) In case of an employee stated above who has at any time in the past been a member of subordinate cadre, his length of service will be reckoned from the date of his promotion to the non-subordinate cadre. Further, one year additional seniority will be allowed every three completed years of service reckoned from the date of appointment on probation in sub-ordinate cadre. However, such employee stated above will not be eligible for further promotion unless he has worked in the sub-ordinate cadre for a period of 2 years.
- (e) Subject to a minimum 2 years actual service in non-subordinate cadre no eligible employee with less than 5 years seniority in terms of (a), (b), (c) & (d) above shall be eligible for promotion as special Assistant.”

On the basis of the above norms the seniority list is published from time to time and the placement of some employees may be affected due to acquiring additional qualifications by other employee or due to promotion of an employee from sub-staff category with sufficiently reckonable service. The seniority of R. P. Rai was rightly shown at Sl. No. 16 by giving him weightage of 3 years for his service of about 11 years 8 months in sub-staff cadre as per norms of the above Rules for promotion (i.e. one year for every completed 3 years of service) and weightage of one year for graduation. Similarly the seniority of Rajendra Prasad and Kailash Prasad was drawn by giving weightage for 3 years for the service of about 11 years 5 months and 11 years 9 months respectively in sub-ordinate staff cadre. This seniority rating is as per seniority list published as on 31-12-84 where the seniority of S. K. Tiwary, the concerned workman, was rightly shown in Sl. No. 45. Thereafter the Bank published another seniority list on 31-12-85 and there the seniority of S. K. Tiwary has been elevated by 3 positions i.e. 42nd position. The preparation of seniority list as on 31-12-87 is under process. While circularising the seniority list sufficient opportunity is afforded to all the employees to point out discrepancies or lodge their objections to the seniority position. Any objection of discrepancy is carefully examined and wherever necessary due modification is effected in the seniority list. Objection of the concerned workman was duly examined by the Bank in terms of the Rules for promotion as also on the basis of material facts and the reviewed position was communicated to him by letter dated

19-12-85. The settlement is lawfully enforceable and as a matter of fact, is in force for the last 5 years and the fruits of the same are being enjoyed by all the employees irrespective of their affiliation to any union. The members of the concerned union including the concerned workman too have already taken the advantage of the said settlement in the course of their service life. They are bound to abide by the provisions of the said settlement. The concerned workman has challenged the settlement by a writ No. C.W.J.C. No. 4960 of 1987 which was dismissed by the Hon'ble High Court, Patna vide order dated 10-11-1987 and subsequently a review petition No. 80 of 1987 was also dismissed by the Hon'ble Court. In view of these facts and circumstances the management of the Bank prays that its action in placing S. K. Tiwari in the seniority list on the basis of settlement dated 22-1-1983 be held to be justified.

3. The case of the concerned workman as President of Bihar State Allahabad Bank Employees' Union, benefit of details, is as follows :

The name of the concerned workman has been wrongly written in the terms of reference as S. N. Tiwary : his correct name is S. K. Tiwari and this being a clerical error, may be ignored by the Tribunal. He is at present the President of Bihar State Allahabad Bank Employees' Union. He joined the services of the Bank on 4-11-1975 and was confirmed in the post in 1975. Since the date of his joining he has been continuously working as Clerk and is posted at present at Bokaro Steel City Branch of the Bank. Allahabad Bank published the seniority list of the clerical staff on 31-12-1984. In the seniority list his name appears at Sl. No. 45 and his date of birth was shown 5-9-1945. Union scrutinising the seniority list published by the Bank, he detected that the published list did not reflect the correct position with respect to seniority of services on clerical cadre. It was found that persons junior to him in service were shown senior in the seniority list. For example, R. P. Rai who is junior to him in service has been placed in Sl. No. 16 and his date of appointment has been shown 13-5-1976. Similarly, the name of Rajendra Prasad, who is junior to him appears in Sl. No. 27 and his date of appointment has been shown as 4-5-1976. Likewise, the name of Kailash Prasad has appeared in Sl. No. 28 and his appointment has been shown as 5-6-1976. He filed a petition protesting about his wrong placement in the seniority list before Asstt. General Manager of the Bank on 30-4-1985. After repeated reminders the Chief Manager of Allahabad Bank by letter dated 19-12-1985 informed him that his juniors were rightly shown as senior in the seniority list and that the seniority list was prepared and published in accordance with the rules for promotion dated 22-1-1983 which is based on a settlement between the management of Allahabad Bank and the members of the sponsoring trade union i.e. Co-ordination Committee. After receipt of this letter he sent another letter dated 19-2-1985 to the General Manager of Allahabad Bank pointing out in the said letter that the rules of promotion dated 22-1-1983 was not binding upon him and that the said rule was ille-

gal and ultravires. The General Manager sat over the matter which revoked him to send the reminder to the General Manager. But even then no reply was given. Thereafter his union took up the cause and raised an industrial dispute before the A.L.C.(C), Patna. The A.L.C. started conciliation proceeding. But since the management refused to re-consider the matter, he was constrained to submit a failure report to the Central Government. The appropriate Government has been pleased to refer the dispute for adjudication before this Tribunal. The conditions of service of the employees of Allahabad Bank are governed by the provisions of Sastri Award and Desai Award and also by Bi-partite settlement entered into between the Indian Bank's Association (I.B.A.) and the worker's Unions. But in none of them Awards and Bi-partite Settlements there is even slightest stipulation that the persons senior in service in the cadre of clerk can be put below who was appointed later in the cadre. The action of the Allahabad Bank is not supported even on applying the general principle of service law which envisages that settled seniority can not be unsettled without showing any cogent reason. It has been alleged that the rules for promotion dated 22-1-1983 is Ultra Vires to the statutory law, namely, Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. It has been asserted that his union or its parent body was never consulted by the Bank before entering into the settlement dated 22-1-1983 and that the members of the union were never represented in the settlement. The settlement between the management of Allahabad Bank and its sponsoring union, namely, Co-ordination Committee can not bind either him or his union in view of Section 18(1) of the Industrial Disputes Act, 1947. It is also alleged that the settlement dated 22-1-1983 is malafide have on the part of the management of the Bank to encourage inter union rivalry National Confederation of the Bank Employees (NCBE) is recognised by the Indian Bank's Association (I.B.A.) as the representative of the overwhelming majority of the Bank employees. The Bank employees have got fundamental right to have fair terms and conditions of service. In the circumstance it has been prayed that the management be directed to place S. K. Tiwari, Clerk, in appropriate place in the seniority list as per his seniority in the clerical cadre. It is also prayed that the members of his union can not be bound by settlement dated 22-1-1983 to which they are not a party.

4. In rejoinder to the written statement of the concerned workman the Bank has denied and disputed the contentions raised therein and asserted that its action with regard to the seniority rating of the concerned workman is justified.

5. In rejoinder to the written statement of the management the concerned workman has stated that there can be no estoppel against statute and that mere acquiescence in a settlement or its acceptance by a workman will not make him a party to the settlement for the purpose of Section 18 of the Industrial Disputes Act. It has been asserted that even a minor

union of workers can raise an industrial dispute even if any union which constitutes majority of workmen enters into a settlement with the employer. It has also been contended that giving a person a higher place in seniority list is a matter of promotion and that no one can be appointed in a post with retrospective effect. The management has never consulted his union at any stage regarding the settlement on the rules for promotion. It has been asserted that the settlement dated 22-1-1983 is not and can not be made binding on his union.

6. Allahabad Bank has asserted in reply to the rejoinder of the concerned workman that the settlement on the rules for promotion has been arrived at in accordance with the provisions of Industrial Disputes Act and it is binding on all.

7. The Bank has examined only one witness, namely, W.W. 1 L. Govinda Rao working as Personnel Officer and laid in evidence a sheaf of documents which have been marked Ext. M-1 to M-8. The concerned workman or his union has not examined any witness but laid in evidence some documents which have been marked Exts. W-1 and W-2.

8. Admittedly, Allahabad Bank (hereinafter referred to as Bank) is a nationalised Bank having its Head Office at Calcutta, Zonal Office at Patna and Regional Office at Ranchi. The Bank has got one branch at Bokaro Steel City which is known as Bokaro Steel City Branch. There exists no dispute that Sunil Kumar Tiwary, shortly referred to as S. K. Tiwary, has been working in Bokaro Steel City Branch of the Bank as Clerk. It appears that his short name has been incorrectly written as S. N. Tiwary instead of S.K. Tiwary in the schedule to the reference and this mistake, for the purpose of disposing of the present reference, is ignored.

9. It is the irrefragable position that S. K. Tiwary joined the services of the Bank as Clerk on 4-11-75; he was confirmed in that post in 1976. The materials on record discloses that he is a B.A.

The workmen of the Bank are organised into trade unions. Allahabad Bank Employees' Co-ordination Committee is one of the trade unions operating in the Bank. M.W. 1 L. Govinda Rao, now working as Personnel Officer of the Bank has stated that his Co-ordination Committee is the recognised union representing the members of staff covered by Awards/ Settlements. There is no dispute that another union is operating in the Bank which is known as Bihar State Allahabad Bank Employees' Union affiliated to its parent body known as National Confederation of Bank Employees (N.C.B.E.). Sri S. K. Tiwary is the President of the Bihar State Allahabad Bank Employees Union. It is claimed in the written statement of the concerned workman that National Confederation of Bank Employees (N.C.B.E.) is recognised by Indian Banks' Association (IBA) as the representative of the overwhelming majority of the Bank employees. The management of the Bank has offered no comment on these statements and stated that these statements made are matters of records. The concerned workman has produced no evidence in support of this contention. Anyway, the claim of the concerned

workman that National Confederation of Bank Employees is recognised as the representative of overwhelming majority of the Bank employees has got no direct relevance to the present industrial dispute.

10. The crux of the present dispute is whether the action of the management of the Bank in placing S. K. Tiwary, the concerned workman, clerk junior to others on the basis of settlement dated 22-1-1983 to which his union was not a party is justified or not. Evidently, his reference refers to the seniority list published by the Bank on the basis of settlement dated 22-1-1983.

Sri S. K. Tiwary had contended that the management has got no authority to publish this seniority list on the basis of settlement dated 22-1-1983 and even if they have, the same is not binding on him and his union since his union was not a party to the settlement.

Sri Srikant, authorised representative of the Bank has contended that the settlement was not the result of an industrial dispute and that the settlement answers to the test of reasonableness and also the test of serving largest good. He has further contended that the seniority list was prepared by the management in connection with the matters, namely, concerning promotion and that the management have no obligation to consult the trade unions over the issue. He has also asserted that the seniority list was prepared on the basis of settlement dated 22-1-1983 and that the settlement has not violated the guidelines with regard to rules for promotion as envisages in Sastry Award and Desai Award. He has lastly contended that since Sri Tiwary has accepted the benefits under the settlement, he is not competent to dispute the provisions thereof.

11. Sri Tiwary has submitted that as per Section 19(1)(d) of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970, the Board of Director of a corresponding new Bank may, after consultation with the Reserve Bank and with the previous sanction of the Central Government, make regulations or any scheme with regard to the conditions and limitation subject to which the corresponding new Bank may appoint Adviser, Officer or other employees and fixing the remuneration and other terms and conditions of service. Indeed, the Board of Director of corresponding new Bank has such power but even that it does not seem to be illegal for a new Bank to lay down the service conditions by other method including the method of collective bargaining.

12. Para 529 of the Sastry Award envisages as follows :

"We do not think that any hard and fast rules can be laid down in connection with promotions. We are definitely opposed to the suggestion that employees' unions should be consulted in connection with promotions. It can not be supported on principle. We do not think that such consultation is likely to be helpful either. While there is

no doubt that seniority in service should be one of the most important factors to be taken into account for the purpose, we are unable to agree that mere length of service alone irrespective of efficiency, educational qualification, character and nature of responsibility required in connection with the vacancies to be filled in should be the sole or even the main criterion for promotion. Promotion is certainly not a matter which could be made automatic and a great deal of discretion by its very nature must rest with the management in this connection. It is not only difficult but very undesirable to lay down any one single principle for the exercise of this discretion."

The relevant part of Para 14.12 of the Desal Awards runs as hereinunder :

"At present there are no hard and fast rules in connection with promotions. I cannot in this reference lay down whether for the purpose of promotion, employees should be considered establishment-wise, area-wise, circle-wise, state-wise or in the country as a whole. A seniority list to be useful must be co-related to the totality of persons from whom a choice is to be made for the purpose of promotions. It is not possible for me to direct any list to be prepared on any particular basis which would be of practical use. Under the circumstances, having regard to the limited scope of the Reference though I recognise the need for maintenance of seniority lists, I am unable to give any directions making it obligatory on the Banks to maintain seniority list on any particular basis. I may in passing, observe that having regard to the limited scope of the reference, this matter has not been fully dealt with before me."

13. It appears that the management of the Bank framed rules for promotion on the basis of a settlement on promotion policy between the management of Allahabad Bank and All India Allahabad Bank Employees' Co-ordination Committee on 11-1-75 (Ext. M-1). Part V under heading 'Promotion from Clerks to Special Assistants' Para (d) envisages as follows :

"(d) In the case of an employee who has at any time in the past been a member of the subordinate cadre his length of service will be reckoned from the date of his promotion to clerical cadre.

Further, one year's seniority will be allowed for every three completed year's service reckoned from the date of appointment on promotion in subordinate cadre. However, such an employee will not be eligible for further promotion unless he has worked as a clerk at least for a period of three years."

There is no evidence on record to indicate that any seniority list was published on the basis of this

settlement. After expiry of the settlement it was replaced by settlement dated 22-1-83 (Ext. M-2) where in Part V, the same provision was incorporated with minor changes. The provision runs as follows :

"(d) In case of an employee stated above who has at any time in the past been a member of subordinate cadre, his length of service will be reckoned from the date of his promotion to the non-subordinate cadre. Further, one year additional seniority will be allowed for every three completed years' service reckoned from the date of appointment on probation in subordinate cadre. However, such an employee stated above will not be eligible for further promotion unless he has worked in the non-subordinate cadre for a period of 30 years."

14. It appears that on the basis of rules for promotion framed on the basis of settlement dated 22-1-83 the seniority list for the Special Assistant and Clerical Staff as on 31-12-84 was published for the first time on 24-3-85 (Ext.M-3). Later another seniority list for the Special Assistant and Clerical Staff as on 31-12-85 was published by the Bank on 19-1-87 (Ext.M-4). It further appears that provisional seniority list of Special Assistant and Clerical staff as on 31-12-87 was published by the Bank on 20-6-88 (Ext.M-5).

15. It is the case of the concerned workman that in the seniority list as on 31-12-84 his name appears at sl. no. 45 while the name of H. P. Rai, Rajendra Prasad and Kailash Prasad, all juniors to him, have appeared at sl. nos. 16, 27 and 28 respectively. The position is really so in so far as the seniority list is concerned. The management has asserted that the seniority list prepared by them is correct because it was prepared on the basis of the norms as spelt out in the promotion policy arrived at by settlement dated 22-1-83 (Ext.M-2). By way of clarification the management has stated that R. P. Rai was given weightage for three years for his service of about 11 years and 8 months in subordinate staff cadre as per norms of promotion policy and weightage of one year for graduation. Similarly, Rajendra Prasad and Kailash Prasad were given weightage of three years for their service of about 11 years and 5 months and 11 years and 9 months respectively in subordinate cadre. But the main question is not whether the seniority list was prepared on the basis of norms of promotion as spelt out of the settlement dated 22-1-83. The main crux of the question is whether such promotion policy and seniority list can be framed by the management by settlement with one union, although recognised one, ever the head of another union or whether such settlement will be binding on the union not a party to it.

16. Admittedly, seniority list which flows from the settlement dated 22-1-83 was arrived at between the management of Allahabad Bank and All India Allahabad Bank Employees' Co-ordination Committee (Ext. M-2). The union Sri Tiwai belongs to is not party to the settlement. Besides, it

appears that the management arrived at the settlement with the union otherwise than in the course of conciliation proceeding. Such settlement is binding on the parties to the agreement as per Section 18(1) of the Industrial Disputes Act.

Appreciating that the management has lended itself into a difficult position by framing rules for promotion and embroiling all the workman of the Bank by agreement with one union although there are at least two unions operating in the Bank. MW-1 L. Govinda Rao, Personnel Officer, has tried wriggled the management out of the impasse by stating that the settlement was arrived at amicably but processed through Conciliation Officer as per Section 18 of the Industrial Disputes Act. This statement of his is a travesty of fact to say least, for there is no evidence on record that the agreement was arrived at in the course of conciliation proceeding or in presence of the Conciliation Officer. That being so, the net result of the agreement is that it is binding on the parties to the agreement. It has been held in the case reported in AIR 1978 SC. 828 that a settlement arrived at by an agreement between the employer and the workman otherwise than in the course of conciliation proceeding is binding on the parties to the agreement and the settlement arrived at in the course of conciliation proceeding under the Act is binding not only on the parties to the industrial dispute but also on other persons specified in clauses (b), (c) and (d) of Sub-Section 3 of Section 1 of the Act. This being so, it must be concluded that Bihar State Allahabad Bank Employees Union is not bound by the agreement dated 22-1-83 envisaging rules for promotion, which laid the basis for seniority list.

17. Sri Shreekant has contended that since Sri Tiwary and the members of his union have accepted benefits flowing from the settlement they are estopped from disputing the settlement. Unfortunately, the theory of implied agreement by acquiescence on the basis of acceptance of benefits flowing from the agreement by the workmen who were not signatory to the settlement is of no avail to the management since an implied agreement by acquiescence or by conduct, such as, acceptance of benefits under an agreement to which the workman acquiescing or accepting the benefit was not a party being outside the purview of the Industrial Disputes Act.

18. From my discussion above it is obvious that Sri Tiwary is not bound by the seniority list prepared on the basis of agreement dated 22-1-83. But it is not wise nor proper to a jettison the entire agreement. The management and the non-signatory union could avoid industrial unrest by arriving at an agreement which ensures to the benefits of the workmen. That being so, the correct approach should be that the management would decide the issue of seniority of Sri Tiwary after giving him hearing. Since there is no evidence on record to indicate that any other member of the union Sri Tiwary belongs to has been affected by the agreement, I am not inclind to pronounce any opinion in the matter.

19. Accordingly, the following award is rendered the action of the Allahabad Bank in placing S. K. Tiwary, Clerk, Bokaro Steel City Branch, junior to

others on the basis of settlement dated 22-1-1983 is not justified. The management is directed to determine the seniority of Sri Tiwary after giving him hearing in the matter.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer  
[No. L-12011/40/87-D.II(A)]

का. आ. 1348—जातीयिक विवाद अधिकार, 1947 (1947 का 14) की धारा 17 के अनुसार में, जनरल सरकार द्वारा अंतर्राष्ट्रिय के प्रबन्धनात्मक संबद्ध नियोजकों द्वारा उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट जातीयिक विवाद में अधिकारण, भुवनेश्वर के पंचाट को प्रकाशित करता है, जो केन्द्रीय सरकार का 16-5-89 को प्राप्त हुआ था।

S.O. 1348.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of India and their workmen, which was received by the Central Government on the 16-5-89.

#### ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR  
Industrial Dispute case No. 19 of 1988 (Central)  
Dated, Bhubaneswar, the 24th April, 1989

#### BETWEEN

The Management of Bank of India, Orissa Zone,  
Bhubaneswar, First Party  
—Management.

#### AND

Their workmen represented through the General Secretary, Bank of India Employees' Union,  
C/o Bank of India, Balasore Branch.

Second Party  
—Workmen.

#### APPEARANCES :

None For both the  
parties.

#### AWARD

The Government of India in the Ministry of Labour, in exercise of the powers conferred upon them by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute, vide their order No. L-12011/125/87-D. II(A), dated 14th July, 1988 for adjudication :

“Whether the action of the management of Bank of India, Orissa Zone in entrusting the special allowance duty to Shri S. Nayak, Cash-cum-Accounts Clerk at Paradip Branch and Shri S. C. Panda, Cash cum-Accounts Clerk at Sumandal Branch is justified ?

If not, who are the eligible candidates for entrustment of special allowance duty at Paradip and Sumandai Branch of the Bank of India in their places?"

2. The date is fixed to today for hearing. Both parties are absent today. In view of the non-appearance of both the parties in the Tribunal, it can safely be inferred that at present, no dispute subsists between the parties. Hence, a no dispute Award is passed, so far as this reference is concerned. Dictated & corrected by me.

S. K. MISRA, Presiding Officer  
[No. L-12011/125/87-D. III(A)]

का. आ. 1349—ओर्योगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, प्रत्यावरण में निविष्ट ओर्योगिक विवाद में केन्द्रीय सरकार ओर्योगिक प्रधिकरण, चंडीगढ़ के पंचाट को प्रकाशित करती है तो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1349.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the Punjab National Bank and their workmen, which was received by the Central Government on the 16th May, 1989.

#### ANNEXURE

BEFORE SHRI M. S. NAGRA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CANDIGARH

Case No. I.D. 35/86

#### PARTIES :

Employers in relation to the management of Hindustan Commercial Bank now Punjab National Bank.

AND

Their workman—Smt. Neelam Kapoor.

#### APPEARANCES :

For the workman—S. K. Mahajan.

For the management—Lembhar Chand.

INDUSTRY : Banking STATE : Punjab

#### AWARD

Dated 20th April, 1989

On a dispute raised by Smt. Neelam Kapoor against Hindustan Commercial Bank now Punjab National Bank, Central Government had vide No. L-12012/121/86-D. IV(A) dated 9th November, 1987 referred the following dispute to this Tribunal:

"Whether the action of the management of Hindustan Commercial Bank (now Punjab

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National Bank) in relation to their branch at Amritsar is not promoting Smt. Neelam Kapoor, Clerk to the post of Special Asst. is justified? If not, to what relief the workman is entitled and from what date?"

2. During the pendency of the proceedings the parties have amicably settled the dispute and informed the Tribunal accordingly through joint statement dated 11-4-1989. In view of the same a No Dispute Award is returned.

Chandigarh.

20-4-1989.

M. S. NAGRA, Presiding Officer  
[No. L-12012/121/86-D. IV(A)]

का. आ. 1350—ओर्योगिक विवाद प्रधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हैंडिकॉन बैंक के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, प्रत्यावरण में निविष्ट ओर्योगिक विवाद में केन्द्रीय सरकार ओर्योगिक प्रधिकरण, चंडीगढ़ के पंचाट को प्रकाशित करती है तो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1350.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure in the industrial dispute between the employers in relation to the Indian Bank and their workmen, which was received by the Central Government on the 16-5-1989.

#### ANNEXURE

BEFORE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL : ORISSA : BHUBANESWAR

Industrial Dispute Case No. 17 of 1988 (Central)

Bhubaneswar, the 17th April, 1989

#### BETWEEN :

The Management of Indian Bank, Cuttack

First Party

MANAGEMENT.

AND

Smt. Kushilata Gochhayat, C/o. Uchhab Gochhayat, At : Pabitrapara, P.O. Asureswar, Distt : Cuttack.

Second Party

WORKMAN.

#### APPEARANCES :

Shri N. Tripathy, Manager of Indian Bank, Danpur.

For the First  
Party-management.

Sri K. Nayak, General Secy., Indian Bank Employees' Union, Orissa.

For the Second  
Party-workman.

## AWARD

The Government of India in the Ministry of Labour Department, in exercise of the powers conferred upon them by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute vide their order No. L-12012/610/87-D.II(A), dated 13th June, 1988 for adjudication :

"Whether the action of the management of Indian Bank, Danpur Branch in refusing employment to Smt. Kushilata Gochhayat, Sweepers w.e.f. 31-1-84 is justified ? If not, to what relief the workman is entitled ?"

2. This case was posted to today for recording of settlement. A joint petition of compromise is filed signed by the workman, her representative and the Manager of the Bank with a prayer that the same be recorded. Another petition is filed by both parties requesting to pass an award in terms of the compromise. The petition of compromise is read-over and explained to the workman and she admits the contents thereof to be correct. As per the terms of compromise the workman is taken back to employment and would be given wages and other benefits as admissible to such workman on and from the date she joins. The compromise, in the circumstances of the case appears to be fair. Hence, I pass this award in terms of compromise. The petition of compromise do form part of the award.

S. K. MISRA, Presiding Officer,  
[No. L-12012/610/87-D.II(A)]

BEFORE THE PRESIDING OFFICER  
INDUSTRIAL TRIBUNAL, ORISSA  
BHUBANESWAR

I.D. Case No. 17/88 (Central)

BETWEEN :

The Management of Indian Bank.

First Party.

AND

Their workman—Smt. Kushilata Gochhayat.  
Second Party.

The humble joint petition of compromise on behalf of both the parties.

Most Respectfully Sheweth :—

1. That the dispute pending for adjudication by this Hon'ble Tribunal in this case in the following terms :—

"Whether the action of the Management of Indian Bank Danpur Branch in refusing employment to Smt. Kushilata Gochhayat, Sweepers, w.e.f. 31-1-84 is justified ? If not, to what relief the workman is entitled ?"

2. That the second party workman is being represented in this case by Sri Kulamani Nayak, the

General Secretary, Indian Bank, Employees' Union, Orissa.

3. That in the meanwhile, both the parties in their mutual interest have had several rounds of talk to settle up the dispute amicably and fairly. The parties have now ultimately arrived at a settlement of the dispute with their free volition and without any outside pressure, the terms of which are recited below :—

(a) The second party workman Smt. Kushilata Gochhayat will be given fresh employment as a part time sweepers on permanent basis at Danpur Branch of the first party w.e.f. the date of her joining in the service of the first party. On her so joining, she will be eligible to draw 1/3 scale wage at the existing rate as applicable to Danpur Branch and other benefits as admissible.

(b) Smt. Kushilata Gochhayat will not be eligible nor shall lay any claim to continuity of service or to back wages or to any other service benefits for the period of her unemployment.

3. Both the parties understand and agree that, this settlement is fair and in the best interest of the parties and the parties accordingly declare that, they have no other or future cause of action to pursue this case.

## PRAYERS

In the above circumstances, both the parties jointly and severally pray that, this Hon'ble Court be graciously pleased to accept this compromise and to pass an award in terms of this compromise.

And for such act of kindness the parties shall ever pray.

By the second party

through

Sd/-

(Kushilata Gochhayat.)

Witness

Sd/-

(Kulamani Nayak)

(General Secretary)

Indian Bank Employees' Union.

By the first party

through

For INDIAN BANK

Manager, Danpur Branch

Sd/-

(Niranjan Tripathy)

Bansidhar Sahoo

Jr. Clerk

O. R. T. Co. Ltd. Bhubaneswar

Bhubaneswar, 17th April 1989.

पा. ना. 1351—औद्योगिक विवाद अधिनियम, 1947 (1947 ना. 14) की धारा 17 से अनुसरण में, केन्द्रीय गरकार द्वारा प्राक दिल्ली में प्रबन्धनात्मक ने संबद्ध नियोजकों और उनके कर्मकारों के बीच, अन्तर्बंध में नियमित औद्योगिक विवाद में नेतृत्वीय गरकार औद्योगिक अधिनियम नियोजन के प्रचलन को प्रकाशित करनी है, जो केन्द्रीय गरकार को 16-5-89 को प्राप्त करा था।

S.O. 1351.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of

the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of India and their workmen, which was received by the Central Government on the 16th May 1989.

### ANNEXURE

BEFORE SHRI M. S. NAGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHANDIGARH

Case No. I.D. 67/86

#### PARTIES :

Employers in relation to the management of Bank of India.

AND

Their workmen : Amar Singh

#### APPEARANCES :

For the workman--Sh. Natha Singh.

For the management--None.

INDUSTRY : Banking STATE : Punjab

#### AWARD

Dated 21st April, 1989

On the dispute raised by Amar Singh against Bank of India Central Government had vide No. L-12012/233/86-D. II(A) dated 16-12-1986 refer the following dispute to this Tribunal :

"Whether the action of the management of Bank of India in termination of services of Shri Amar Singh gunman w.e.f. 14-6-1985 is justified ? If not, to what relief workman concerned is entitled ?"

2. Case of the workman is that he joined services of the Bank on 19-7-1984 in the capacity of Bank guard/gunman at a salary of Rs. 450 p.m. But Bank illegally terminated his services on 14-6-1985. He seeks his re-instatement back in service with full back wages.

In its answer filed management took plea that Amar Singh is not a workman as defined under Section 2(1) of the I.D. Act 1947 and the present proceedings are without jurisdiction. It is mentioned that a meeting had taken place on 27-3-1984 at Punjab Bhawan Chandigarh when decision was taken for posting of special police officers by the Senior Superintendent of Police in terms of Section 17 of the Police Act and the special police officers so appointed were to work under the discipline and control of the District SSP's but the Banks were to pay honorarium of Rs. 15 per day to each SPO through Police Officer to be designated by the SSP. It is pleaded that in the light of the said decision taken at meeting with police officers with the bank authorities Amar Singh was deployed by the police authorities to guard Bank of India Sarna Canal Branch in Pathankot district during the period

1984-85. Police authorities had also provided fire arms and ammunition to Amar Singh who continued to function under the direct control and supervision of District Superintendent of Police but he was paid Rs. 15 per day by the Bank in the form of honorarium as agreed to in the meeting dated 27-3-84 between senior Officer of Police with Bank Officers. It is pleaded further that as the law and order situation improve Amar Singh was not deployed by police authorities subsequently on their own. At no point of time Amar Singh was employee of the respdt. Bank and it is the police authorities who were directly deploying, controlling and supervising the work of the petitioner. In nut-shell the defence of the respdt. bank that there was no employers and employee relation between the respdt. bank and Amar Singh petitioner in as much as the petitioner was deployed by the police authorities at their own and subsequently withdrawn and thereafter Bank has posted a regular armed guard Atma Ram in its Sarna Canal Branch w.e.f. 25-3-1986 in the regular scale on permanent basis.

3. Parties were allowed to lead evidence. The management filed affidavit Ex. M1 of Mangal Singh Industrial Relation Officer, Bank of India Zonal Office, Chandigarh who solemnly affirmed that scheme of deployment of special police officers was approved in a meeting held on 27-3-1984 between police officers and Bank Officers wherein it was stipulated that employment as SPO is not a regular government service and it will be made plain to all individual employees on this duty that they are not regular employees of the Bank. Manager of each branch will however arrange to pay to each SPO an honorarium of Rs. 15 per day for the full period of 30/31 days in the month. It is pleaded further that the Police Officer had deployed some of their personnel to Guard branches of the Bank and present petitioner Amar Singh was deputed by the Police Authorities to Guard Sarna Canal Branch of Bank of India in Pathankot District. Amar Singh who was provided with gun by the Police Authorities continue to function under the direct Control and Supervision of District Supdt. of Police who was deploying such persons from time to time taking into account law and order situation of the concerned area. Subsequently Police Authorities stop sending Amar Singh on their own and was thus withdrawn by them (Police Authorities). Management also placed on file copy I.x. M2 of the circular No. PZO/Sec. 502/84-014 dated 21-7-1984 incorporating decision taken on 27-3-84 in the meeting of Bank Officers with the Police Authorities. During his cross examination Sh. Mangal Singh made statement that no service record of the petitioner was kept and attendance was never marked by the Bank but a private note was kept by Branch Manager in a diary for calculating the working days for which he was to be paid.

In rebuttal workman tendered his affidavit Ex. W1 reiterating allegations made in the statement of claim that he was appointed in 1984 as Gun man at salary of Rs. 450 but his services were illegally terminated on 14-6-1985 without giving any retrenchment compensation or one month notice. During his cross-examination he admitted that at the asking of the Sainik Board, Senior Superintendent of Police after

verifying antecedent had asked him to accompany the Bank Manager. He also admitted that he was not issued any letter of appointment by the Bank.

4. The evidence on the file shows that in a meeting held on 27-3-1984 between Bank authorities and State Police functionaries at Punjab Bhawan Chandigarh, it had been decided that District Superintendent of Police will be appointing special police officers in terms of Section 17 of the Police Act and Manager of each branch will arrange to pay to each special police Officers (S.P.O.s) honorarium at Rs. 15 per day for the full period of 30/31 days in the month. It will be worthwhile to reproduce columns 2 & 4 of para 3 of the extract of the meeting reproduced in Bank's letter dated 21-7-1984 photocopy of which is Ex. M2 which reads as follows :

- "(ii) For all other branches guards will be provided by District SSPs after selecting suitable ex-serviceman or other able bodied persons who will be appointed as special police Officers in terms of Section 17 of Police Act. Preference may be given to persons who may already be in possession of licensed weapons. All persons appointed as SPOs for this purpose will be given a brief training for about 7 days in the Police Lines in the handling of weapons, taking suitable positions for protection of branches, rudimentary field crafts etc. These SPOs will work under the discipline and control of the District SPOs and as per police Act. They will have the same powers, privileges and protection and shall be amenable to same penalty as an ordinary police personnel."
- (iv) It will be made plain to all individuals employed on this duty that they are not regular employees of the Bank and should not, therefore, harbour in their minds any claim for permanent employment or other concessions which are available to Bank employees. However, as and when a Bank Security Force is raised, they will be given preference in the matter of recruitment provided they are found fit otherwise and their performance has been upto the marks during this period. Employment as SPO is not a regular government service. It is only an ad-hoc arrangement which has been provided in the Police Act to tide over a difficult law and order situation and the money proposed to be paid to them is not a salary but actually an honorarium for meeting their out of pocket expenses etc."

Workman has admitted that on the asking of the Sainik Board he had visited the office of the Senior Superintendent of Police who in turn asked him to accompany the bank manager. Admittedly no letter of appointment was issued by the Bank authorities to him.

It is simple case wherein in light of deteriorating law & order situation in Punjab State it had been

throught fit by the police to provide S.P.Os at vulnerable bank branches but their honorarium was left to be paid by bank branches so guarded. The petitioner contend that he was employee of the bank. The Bank management has taken a stand that petitioner was only ad-hoc employee of the police department of the State. In support of his contention that petitioner is employee of the State Police, learned counsel for the management referred me to various provisions of the Police Act, 1951 which envisages appointment of S.P.Os (Special Police Officers) at cost of individual. In this respect he has drawn my attention to Section 13 of the Police Act which provides that the District Supdt. of Police & Officers senior to him may on the application of any person, depute any number of police officers at the charge of the person making application, but the said force shall be exclusive under the orders of the District Supdt. of Police. He has, further referred me to Section 17 of the Police Act which provides for appointment of S.P.Os. Section 18 of the Act provides that S.P.Os so appointed shall be amenable to the same penalty and the subordinate to the same authority as the ordinary officer of police. There is overwhelming evidence on the file to show that present petitioner was appointed as S.P.O. by police authorities, but since he was deputed to guard banks, the Bank management had agreed to pay honorarium @ Rs. 15 per day to the S.P.Os so posted. Admittedly present petitioner never applied to the Bank authorities for his appointment and no letter of appointment was issued to him. The S.P.Os including the petitioner had been given arms and ammunition by police authorities which were returned back to the police department when services of the petitioner were dispensed with. The petitioner was ad-hoc employee of police department and not employee of the Bank of India. There is thus no question of termination of his services by the Bank. The reference is therefore, returned with the findings that neither petitioner had been employed by the Bank of India nor his services were terminated by the said bank and he is not entitled to any relief whatsoever.

Chandigarh.

M. S. NAGRA, Presiding Officer  
[No. L-12012/233/86-D. II(A)]

का. आ. 1352—ओरिंगिक विभाव प्रधिनियम 1947 (1947 का 14) का धारा 17 के अनुसरण में, केन्द्रीय सरकार ओरिंगिक एन्टल्स बैंक आफ कामर के प्रबलांत के मरव नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्विच ओरिंगिक विभाव में केन्द्रीय सरकार ओरिंगिक प्रधिकरण, चंडीगढ़ के पंचायत को प्रकाशित करनी है, जो केन्द्रीय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1352.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the Oriental Bank

of Commerce and their workmen, which was received by the Central Government on the 16-5-89.

### ANNEXURE

BEFORE SHRI M. S. NAGRA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT.

CHANDIGARH

Case No. 1.D. 29/86.

#### PARTIES :

Employers in relation to the management of Oriental Bank of Commerce.

AND

Their workman : Nirmal Bhatia.

#### APPEARANCES :

For the workman—Shri V.S. Malhi.

For the management—Shri Jagat Arora.

#### AWARD

Dated 24th April, 1989

On a dispute raised by Mrs. Nirmal Bhatia against Oriental Bank of Commerce, Central Govt. had vide No. L-12012/88/85-D.IV(A) dated 17th March 1986 referred the following dispute to this Tribunal for decision :—

"Whether the action of the management of Oriental Bank of Commerce in terminating the services of Miss Nirmal Bhatia, Clerk who has worked for 89 days w.e.f. 1-1-1981 to April 1981 and not considering her for further employment in view of the Section 25(H) of the I.D. Act 1947 is justified? If not, to what relief is she entitled?"

2. The case of the petitioner as set out in the statement of claim is that Nirmal Bhatia petitioner had worked in Katra Ahluwalia Branch of the Oriental Bank of Commerce for 89 days from 1-1-1981 to April 1981 and her services were terminated by the management without giving any notice or pay in lieu thereof. It is pleaded that after termination of the petitioner's service, sizeable number of clerks, were employed by the Bank without affording any opportunity of employment to the petitioner. She seeks preference for employment in the Bank in terms of Section 25-H of the I.D. Act 1947 and has prayed for all connected benefits due to her for keeping her unlawfully unemployed.

In its answer filed the management took preliminary objection that dispute under reference is only an opportunistic adventurism on the part of the petitioner who moved for the present reference in the year 1986 regarding her non-employment in the year 1981. On merits it is mentioned that Nirmal Bhatia petitioner had worked for the Bank for 89 days as temporary clerk in leave vacancy arrangement of regular staff etc. and her employment for specified period which was of purely temporary nature had come to an end by efflux of time. It is pleaded that recruitment in the clerical cadre in the Bank is now done by the Banking Service Recruitment Board and the

answering Bank is not free to appoint any body in clerical cadre unless sponsored by the said Board. It is pleaded that Bank can engage temporary staff in accordance with the provisions of paras 20(7) and 20(8) of the Bipartite Settlement dated 19-10-1966, and petitioner is not entitled to the benefits of Section 25-H of the Industrial Disputes Act 1947.

3. Both the parties were allowed to read evidence and they availed the same. Ms. Nirmal Bhatia petitioner filed affidavit Ex. M1 refuting allegations made in the statement of claim. During her cross-examination she admitted that she was appointed temporarily in leave arrangement and she never applied for permanent appointment to the Bank. She also admitted that her name was never sponsored by the Banking Service Recruitment Board in as much as she never took any written test or appeared for interview. When asked she made statement that she can not give any reason for not raising the dispute earlier. She also admitted that she never attended the conciliation proceedings and does not know the contents of the present petition sponsored by workers union. In rebuttal, the management filed affidavit Ex. M1 of Shri V. K. Gupta, then branch manager, Katra Ahluwalia branch, Amritsar who solemnly affirmed that petitioner had worked in the Bank for 89 days as a temporary clerk in the vacancy arising out of leave of permanent staff and temporary increase in work load the branch. Alongwith affidavit he also filed list Ex. M2 of permanent staff and their leave period against which petitioner was temporarily appointed. He has testified that appointment of permanent clerk is done through Banking Service Recruitment Board. He also tendered copy Ex. M3 of Circular dated 6-6-1980 from the Ministry of Finance, Govt. of India to the Bank laying down recruitment scheme for public Sector bank. Perusal of the said circular shows that under clause 5—16 of the scheme participating banks may fill up temporary vacancies through employment exchange for a period which shall not exceed an aggregate span of six months.

Nirmal Bhatia petitioner who had worked with the respondent Bank for 89 days in leave vacancy arrangement seeks benefits of permanent employment on the basis of provisions of Section 25-H of the I.D. Act 1947. She can seek benefits under Section 25-H of the I.D. Act 1947 only if her case is that of 'recruitment' as defined under Section 2(oo) of the Industrial Disputes Act 1947. She admitted in her cross-examination that her appointment was temporary in leave arrangement. The case is thus covered under exception (bb) of Section 2(oo) and it was not a case of "retrenchment" so as to invoke benefits of preference in re-employment under Section 25-H of the I.D. Act 1947. In view of provisions of Para 20.8 of 1st Bipartite Settlement of 19-10-66 the bank within its competence to appoint temporary workman against permanent vacancy for a period not exceeding 3 months during which period the bank shall make arrangement for filling of the vacancy permanently. The petitioner's employment was not renewed after 89 days and there was no question of termination of her services by the Bank. The reference is returned with the findings that action of the management of Oriental Bank of Commerce for not renewing temporary service of Ms. Nirmal Bhatia clerk who had worked for 89 days w.e.f. 1-1-1981 to April

1981 and not considering for further employment was justified and she is not entitled to any relief under Section 25-H of the Industrial Disputes Act 1947 or otherwise.

Chandigarh.

M. S. NAGRA, Presiding Officer

[No. I-12012/88/85-D. IV(A)]

का. शा. 1353.—ओर्डिनेशन विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, फैदों संकार वैक आफ इटिया के प्रबलतात्म के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निश्चित ओर्डिनेशन विवाद में केवल संकार ओर्डिनेशन अधिकारण, चंडीगढ़ के पंचाट को प्रकाशित करती है, जो एन्ड्रिय सरकार को 16-5-89 को प्राप्त हुआ था।

S.O. 1353.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure in the industrial dispute between the employers in relation to the Bank of India and their workmen, which was received by the Central Government on the 16th May 1989.

#### ANNEXURE

BEFORE SHRI M. S. NAGRA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Case No. I.D. 49/86

#### PARTIES :

Employers in relation to the Management of  
Bank of India

AND

Their Workman : Sardara Singh.

#### APPPEARANCES :

For the Workman.—

Sh. Natha Singh.

For the Management.—

None.

INDUSTRY : Banking

STATE : Punjab

#### AWARD

Dated 21st April, 1989

On the dispute raised by Sardara Singh against Bank of India Central Government had vide No. I-12012/216/85-D.II(A) dated 28-5-86 refer the following dispute to this tribunal :

"Whether the action of the management of Bank of India in terminating the employment of Shri Sardara Singh, Gunman with effect from 14-6-85 is justified ? If not, to what relief the workman concerned entitled ?"

2. Case of the workman is that he joined services of the Bank on 19-7-1984 in the capacity of Bank guard/gunman at a Salary of Rs. 450/- p.m. But Bank illegally terminated his services on 14-6-1985. He seeks his re-instatement back in service with full back wages.

3. In its answer filed management took plea that Sardara Singh is not a workman as defined under Section 2(S) of the I.D. Act 1947 and the present proceedings are without jurisdiction. It is mentioned that a meeting had taken place on 27-3-1984 at Punjab Bhawan Chandigarh when decision was taken for posting of special police officers by the Senior Superintendent of police in terms of Section 17 of the Police Act and the special Police Officers so appointed were to work under the discipline and control of the District SSP's but the Banks were to pay honorarium of Rs. 15/- per day to each SPO through Police Officers to be designated by the SSP. It is pleaded that in the light of the said decision taken at meeting Police Officers with the bank authorities Sardara Singh was deployed by the Police authorities to guard Bank of India Sarna Canal Branch in Pathankot district during the period 1984-85. Police authorities had also provided fire arms and ammunition to Sardara Singh who continued to function under the direct control and supervision of District Superintendent of Police but he was paid Rs. 15/- per day by the Bank in the form of honorarium as agreed to in the meeting dated 27-3-84 between senior officer of police with Bank officers. It is pleaded further that as the law and order situation improved Sardara Singh was not deployed by police authorities subsequently on their own. At no point of time Sardara Singh was employee of the Resptd. Bank and it is the police authorities who were directly deploying|controlling and supervising the work of the petitioner. In nutshell the defence of the resptd. bank is that there was no employers and employee relation between the resptd. bank and Sardara Singh petitioner in as much as the petitioner was deployed by the police authorities at their own and subsequently withdrawn and thereafter Bank has posted a regular armed Guard Atma Ram at its Sarna Canal Branch w.e.f. 25-3-1986 in the regular Scale on permanent basis.

4. Parties were allowed to lead evidence. The management filed affidavit Ex. M1 of Mangal Singh Industrial Relation Officer, Bank of India Zonal Office Chandigarh who solemnly affirmed that scheme of deployment of special police officers was approved in a meeting had on 27-3-1984 between police officers and Bank Officers wherein it was stipulated that employment as SPO is not a regular government service and it will be made plain to all employees on this duty that they are not regular employees of the Bank. Manager of each branch will however arrange to pay to each SPO an honorarium of Rs. 15/- per day for the full period of 20/31 days in the month. It is pleaded further that the Police Officer had deployed some of there personnel to Guard branches of the Bank and present petitioner Sardara Singh was deputed by the Police Authorities to Guard Sarna Canal Branch of Bank of India in Pathankot District. Sardara Singh who was provided with Gun by the Police Authorities

continue to function under the direct control and supervision of District Superintendent of Police who was deploying such persons from time to time taking into account law and order situation of the concerned area. Subsequently Police Authorities stopped sending Sardara Singh on their own end was thus withdrawn by them (Police Authorities) Bank Management also produced in evidence Ex. M3 Affidavit of Janak Raj Gupta then Manager of Sarna Canal Branch of the Bank of India who solemnly affirmed that Police Authorities had employed some of their personnel including Sardara Singh and Amar Singh to Guard Banks during the year 1984-85 Both Sardara Singh and Amar Singh were provided with gents by the Police Authorities it is further stated that Sardara Singh submitted Application alongwith copy of Scheme of Ex. M3 claiming honorarium Rs. 15/- for holidays. Management also placed on file copy Ex. M2 of the circular No. PZO/Sec. 502/84-014 dated 21-7-84 incorporating decision taken on 27-3-84 in the meeting of Bank Officers with the Police Authorities. During the cross-examination Sh. Mangal Singh made statement that no service record of the petitioner was kept and attendance was never marked by the Bank but a private record was kept by Branch Manager in a diary for calculating the working days for which he was to be paid.

In rebuttal workman tendered his affidavit Ex. W-2 reiterating allegation made in the statement of claim. During his cross-examination he admitted that he did not submit any application to the Bank for giving employment. He also submits that Bank never issued him any appointment letter. He made statement that he was called to the Office of Superintendent of Police through Constable and from the S.S.P. office the Branch Manager took him to the Branch.

4. The evidence on the file shows that in a meeting held on 27-3-1984 between Bank authorities and State Police functionaries at Punjab Bhawan Chandigarh, it had been decided that District Superintendent of Police will be appointing special police officers in terms of Section 17 of the Police Act and Manager of each branch will arrange to pay to each special police officers (S.P.O.s) honorarium at Rs. 15/- per day for the full period of 30/31 days in the month. It will be worthwhile to reproduce column 2 & 4 of para 3 of the extract of the meeting reproduced in Bank's letter dated 21-7-1984 photocopy of which is Ex. M2 which reads as follow:

"(ii) For all other branches guards will be provided by District SSPs after selecting suitable ex-serviceman or other able bodied persons who will be appointed as special police Officers in terms of Section 17 of Police Act. Preference may be given to persons who may already be in possession of licenced weapons. All persons appointed as S.P.Os for this purposes will be given a brief training for about 7 days in the police lines in the handling of weapons, taking suitable positions for protection of branches, rudimentary filed crafts etc. These S.P.Os will work under the discipline and control of the District SSPs and as per Police Act.

They will have the same powers, privileges and protection and shall be amenable to same penalty as an ordinary police personnel."

.....

(iv) It will be made plain to all individuals employed on this duty that they are not regular employees of the Bank and should not, therefore, harbour in their minds any claim for permanent employment or other concessions which are available to Bank employees. However, as and when a Bank Security Force is raised, they will be given preference in the matter of recruitment provided they are found fit otherwise and their performance has been upto the marks during this period. Employment as SPO is not a regular government service. It is only an ad hoc arrangement which has been provided in the Police Act to tide over a difficult law and order situation and the money proposed to be paid to them is not a salary but actually an honorarium for meeting their out of pocket expenses etc."

Workman has admitted that on the asking of the Sainik Board he had visited the office of the Senior Superintendent of Police who in turn asked him to accompany the Bank manager. Admittedly no letter of appointment was issued by the Bank authorities to him.

It is simple case wherein light of deteriorating law and order situation in Punjab State it had been thought fit by the police to provide S.P.Os. at vulnerable bank branches so guarded. The petitioner contend that he was employee of the bank. The Bank management has taken a stand that petitioner was only ad hoc employee of the police department of the State. In support of his contention that petitioner is employee of the State Police, learned counsel for the management referred me to various provisions of the Police Act, 1951 which envisages appointment of S.P.Os. (Special Police Officers) at cost of individual. In this respect he has drawn my attention to Section 13 of the Police Act which provides that the District Supdt. of Police & Officers senior to him may on the application of any person, depute any number of police officers at the charge of the person making application, but the said force shall be exclusive under the orders of the District Supdt. of Police. He has further referred me to Section 17 of the Police Act which provides for appointment of S.P.Os. Section 18 of the Act provides that S.P.Os. so appointed shall be amenable to the same penalty and be subordinate to the same authority as the ordinary officer of police. There is overwhelming evidence on the file to show that present petitioner was appointed as S.P.O. by police authorities, but since he was deputed to guard banks, the Bank management had agreed to pay honorarium @ Rs. 15 per day to the S.P.O.s so posted. Admittedly present petitioner never applied to the Bank autho-

ties for his appointment and no letter of appointment was issued to him. The S.P.O.s including the petitioner had been given arms and ammunition by police authorities which were returned back to the police department when services of the petitioner were dispensed with. The petitioner was ad hoc employees of police department and not employee of the Bank of India. There is thus no question of termination of his services by the Bank. The reference is therefore returned with the findings that neither petitioner had been employed by the Bank of India nor his services were terminated by the said bank and he is not entitled to any relief whatsoever.

Chandigarh.

21-4-89.

ATTESTED TRUE COPY

Sd/-

Secretary

Central Govt. Industrial Tribunal  
cum Labour Court, Chandigarh.

M. S. NAGRA, Presiding Officer,

[No. L-12012/216/85-D. II(A)]

N. K. VERMA, Desk Officer